

STATE OF CALIFORNIA  
Energy Resources Conservation and Development Commission

_____	)	
In the Matter of:	)	
	)	
Application for	)	Docket No. 98-AFC-2
Certification of the	)	
La Paloma Generating	)	
Project	)	
_____	)	

Tuesday  
June 29, 1999

Auditorium, McKittrick School  
23250 Second Street  
McKittrick, California

The parties met, pursuant to notice, at 10:11 a.m.

BEFORE: STANLEY VALKOSKY  
Chairman

ROBERT LAURIE  
DAVID ROHY  
Commissioners

BOB ELLER  
Adviser

APPEARANCES:

For the Applicant:

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For the Staff:

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Sacramento, California 95814  
916/654-3963

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# P R O C E E D I N G S

MR. LAURIE: Call to order the meeting to -- it's an evidentiary hearing to consider the La Paloma Generating Project.

My name is Robert Laurie. I'm a commissioner with the California Energy Commission and the presiding member of the committee hearing the case. For further introductions, I'd like to introduce to my right Mr. Stan Valkosky.

Mr. Valkosky is an attorney. He is the hearing officer assigned to this case. Mr. Valkosky will actually administer the hearing today.

To the right of Mr. Valkosky is Dr. David Rohy. Dr. Rohy is the vice-chairman of the energy commission. He is my associate member on the hearing committee.

To Dr. Rohy's right is Bob Eller. Bob Eller is the senior adviser to Dr. Rohy and will be assisting the committee in the hearing today.

It will be -- first of all, let me thank the community, Mr. Barnes, the superintendent, for helping us set up. I understand that we do not have air conditioning today. It will get warm. Feel free to remove whatever you need to remove so long as you stay professionally responsible. That applies to everybody but nongovernmental lawyers who are restricted to their formal attire,  
Mr. Thompson.

We will proceed in a timely manner. The object is to conduct a full, public, participatory hearing today. Everybody will be given an opportunity to speak an offer comments as we deem necessary and appropriate.

For further introductions at this point, I'd like to turn the matter over to Mr. Valkosky.

MR. VALKOSKY: Thank you, Commissioner.

Good morning. Like to start off first with some background remarks and then I'll go over the way we're going to proceed this morning.

By way of background, the committee scheduled today's hearing in a notice dated May 6th, 1999. Now this is a

continuation of the evidentiary hearings that we've held on this project on April 21st and 22nd. Today's hearing is formal in nature and its purpose is to receive evidence and to finish establishing the factual record necessary to reach a decision in this case.

I have a list of documents which have been submitted since the April hearings, and I'd like the parties to go along with me, make sure I have a comprehensive list.

First I have the third supplement to the AFC, dated May 10th, which I've tentatively identified as Exhibit 47. Then I have correspondence from EPA re the class 1 permit application, dated May 11th; identify that as Exhibit 48. I have correspondence regarding negotiations with the Kern County fire department, dated May 11th. That's tentatively ID'd as Exhibit 49.

I have a document dated May 17th, which is the La Paloma traffic analysis, Exhibit 50. A letter from the Department of Transportation, dated June 2nd, 1999, which is 51-A; a response from the Applicant to that letter, dated June 11th, which is Exhibit 51-B. Next we have a preliminary PSD permit from the United States Environmental Protection Agency, dated May 18; that we've identified as Exhibit 52.

We then have the determination of compliance from the air district, dated May 28; that's Exhibit 53. Next document is staff supplemental and revised testimony on air quality, biology and socioeconomics, dated June 14th, Exhibit 54. And the final document which I have is staff's final status report and testimony errata regarding the subject of transmission system engineering, dated June 21st. I've identified that as Exhibit 55.

(The documents referred to  
were marked for identification  
as Exhibits 47 through 55.)

MR. VALKOSKY: Are there any additional documents that will be tendered today?

MR. LAURIE: Stan, I have Exhibit 46, being the revised testimony to the final staff assessment --

MR. VALKOSKY: That is correct. That is pertinent but we have already identified that one on the exhibit list. These are just new ones, okay.

MR. LAURIE: I'd like to just remind everybody that this testimony today is being transcribed, so we'll ask you all to speak relatively slowly and not speak over one another like I just did to my hearing officer, so that the record can remain clean.

MR. VALKOSKY: Thank you.

Are there any additional documents that will be tendered today as evidence? Mr. Thompson?

MR. THOMPSON: We have one exhibit that is new, I believe only one. It is a -- and I don't have it in front of me; I gave one copy to staff and the rest Mr. Ouelette has -- it is, yes, it's the draft injection well permit. It was referenced in another document and we thought the record would be more complete if we included it. The letter from Region 9 of the EPA is dated June 7th, 1999, and we have some copies and I thought if it was appropriate to introduce it at the time that Mr. Ouelette takes the stand.

MR. VALKOSKY: It will be appropriate to introduce it; I'm just trying to get it identified at this time so that the --

MR. THOMPSON: I would ask that it be identified as the next exhibit in order.

MR. VALKOSKY: Okay, that'll be Exhibit 56, then. And it's a letter from Region 9, USEPA?

MR. THOMPSON: Yes.

MR. VALKOSKY: Thanks. All right, we'll tentatively identify as Exhibit 56 a letter dated June 7th, 1999, from the United States Environmental Protection Agency regarding public notice of proposed EPA class 1 injection well permit.

(The document referred to was marked for identification as Exhibit 56.)

MR. VALKOSKY: Mr. Ogata, do you have any?

MR. OGATA: Yes, thank you, Mr. Valkosky. Actually we have two additional documents. We'd like to have identified as Exhibit 57 the US Fish & Wildlife Service formal section 7 consultation on the La Paloma Generating Project, dated June 24th.

MR. VALKOSKY: Okay, we'll identify that as Exhibit 57.

(The document referred to was marked for identification as Exhibit 57.)

MR. OGATA: And we also have a letter from the California Department of Fish & Game, dated June 25th to Mr. Marc Pryor.

MR. VALKOSKY: Do you have sufficient copies of those to distribute?

MR. OGATA: We will have copies of those as soon as our biology folks get here after lunch.

MR. VALKOSKY: Okay, we'll deal with them then; at least we have them identified.

Okay, before I begin, like to see if there are any other parties, formal parties, here today that are going to participate.

MS. POOLE: Kate Poole for CURE. And with me here is Danny Kane from IBEW, Local 428, and Nick Kavanaugh from the Plumbers & Steamfitters.



MR. VALKOSKY: And they will be testifying on socioeconomics?

MS. POOLE: Yes.

MR. VALKOSKY: Anyone else?

Our intention today is to proceed on the topics as indicated on the agenda which was attached to the notice and there were copies in the back, Ms. Ross has additional copies for anyone that needs them.

Is there any need to change this agenda at this time? Mr. Thompson?

MR. THOMPSON: The only reasons that I could see to change the order would be that we have had a discussion among the parties about the appropriate time to take the biology testimony, and we have agreed that in the 1:30 time frame works best because of the -- at that time I think we'll have the presence of US Fish & Wildlife Service and other agencies that are interested in this issue.

I understand that we thought we had an air issue as far as scheduling but that may have gone away. At any rate, we have all of our witnesses here and we will be as flexible as we can.

MR. VALKOSKY: Okay, so with the caveat that biology would be tentatively in the 1:30 time frame, the order is acceptable then, I take it.

MR. THOMPSON: It is.

MR. VALKOSKY: Okay. Mr. Ogata.

MR. OGATA: I think Mr. Thompson said what I was going to say, so with that caveat the schedule's fine with staff as well.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: It's fine.

MR. VALKOSKY: Okay, for those of you that are not familiar with the way our evidentiary hearings go, in these hearings witnesses testify under oath or affirmation. Parties sponsoring a witness will briefly establish the witness's qualifications and have the witness orally summarize the prepared testimony before requesting that that testimony and any accompanying exhibits be moved into evidence.

At the conclusion of the direct testimony, committee will provide the other parties an opportunity for cross-examination, followed by redirect and then recross as if appropriate, and as warranted, multiple witnesses may testify as a panel. At the conclusion of each of the seven topic areas we will invite any members of the public present here today to offer any unsworn public comment.

That basically means contact Ms. Ross back there and she'll let me if there are any members of the public who wish to

speak on a particular topic area; if so, you can then approach the microphone and offer your comment.

Are there any questions on the procedure we're going to follow?

Okay, seeing none, I have two areas that I'd like, before we begin the evidentiary presentations, like to get the responses of the parties.

On June 21st, 1999, we have a petition to intervene in this case, filed by Mr. Brad Foster, and at this time, while the committee will not rule on it today, we would appreciate getting the comments on the parties about this petition.

With that, Mr. Thompson.

MR. THOMPSON: Thank you, Mr. Valkosky.

We would request that the committee refuse intervention status to Mr. Foster. We are filing a formal, very brief response to the -- or, the request for intervention. That should be filed today. However, we do not believe that Mr. Foster satisfies the requirements contained in 20 CCR 1207, specifically, he has not given the committee any reason, any interest in this proceeding, any reason, really, why he should be in.

More specifically, given his late intervention status if it were to be granted by the committee, he would have a showing of hardship or a showing that extraordinary circumstances, something over and above a mere interest, I would submit that not only does he not have any extraordinary circumstances, I would submit he does not have an interest in this proceeding.

All of my cases that I'm involved in received similar documents, including intervention in one of the cases that is a cogeneration facility and did not have an NOI exemption as he claimed.

Yesterday I asked the public adviser to fax to Mr. Perez or to Mr. Foster a notice of today's hearing so that if he did have an interest he could attend. I would ask the committee if they could ask the audience if a representative, if Mr. Foster's here or a representative to argue that motion by himself, but my suspicion is that they are not here.

In any event, I do not believe that the petition satisfies the requirements of 1207.

MR. VALKOSKY: Thank you.

Is Mr. Foster or a representative here present?

There's no response.

Mr. Ogata, staff's position?

MR. OGATA: Mr. Valkosky, we actually have three points we'd like to make regarding this petition. First of all, the regulation that Mr. Thompson cited provides an intervention supposed to occur 30 days prior to the start of evidentiary hearings. Obviously we're well past that time frame, so without a

showing of good cause by Mr. Foster, which this petition has none, we believe that just as a matter of our regulations, he's not entitled to file for intervention in this matter.

Secondly, the legal issue that he is raising was resolved by the commission recently, at its most recent business meeting, and so we believe for that reason as well, because the legal issue has been resolved, that his petition to intervene should be not granted.

However, having said all that, if in fact there is a reason to grant intervention, we would argue that the committee should limit the intervention for the legal issue only and not allow any witnesses or evidence to be taken, and if Mr. Foster would like to present some kind of a legal memorandum on the issue in this particular case, that that should be the only right that he should be allowed with respect to this petition.

MR. VALKOSKY: Thank you, Mr. Ogata.

Ms. Poole.

MS. POOLE: CURE has no position.

MR. VALKOSKY: Okay, thank you.

The committee will take your comments on the petition into consideration, and will issue an order, likely by the end of the week, dealing with this matter.

Final housekeeping matter as we move into the evidentiary portion of today's proceeding. As noticed, the agenda provided time for further testimony under cross-examination on the subject of worker safety, as well as the additional testimony submitted by staff on the areas of hazardous material handling, noise and waste management, which we've designated as Exhibit 46. And also the transmission system engineering errata that staff had provided on June 21st, we've designated that as Exhibit 55.

Is there any need to hear testimony on these topics, Mr. Thompson?

MR. THOMPSON: We have none, and we will stipulate to the admission into evidence of that exhibit and accept it.

MR. VALKOSKY: Okay, Mr. Ogata.

MR. OGATA: We don't have any witnesses on those particular areas except Mr. Pryor is prepared to sponsor those exhibits into evidence if the committee desires.

MR. VALKOSKY: Okay, Ms. Poole.

MS. POOLE: We have no questions on those topics.

MR. VALKOSKY: Okay, with that, Mr. Ogata, we'll take you on your offer, if you like to make the motion.

MR. OGATA: Did you want Mr. Pryor to sponsor this or you just --

MR. VALKOSKY: Yes, move the --

MR. OGATA: Okay, well, in that case I need to call Mr. Pryor to the witness table, please.

MR. VALKOSKY: Swear the witness, please.

Whereupon,

MARC PRYOR,

having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OGATA:

Q Mr. Pryor, could you please tell us what is your job title at the commission?

A I am a planner-2 and a siting project manager.

Q And what are your duties?

A I manage two siting projects for powerplant -- pardon me -- cases for the energy facility siting section.

Q You have before you what's been marked as Exhibit 46, dated April 28th; staff provides testimony in the areas of waste management, noise and hazardous material handling?

A Yes, I do.

Q Could you please summarize -- well, first of all, who is the technical person who wrote the waste management testimony there?

A She is Ellie Townsend Smith.

Q And Ms. Smith testified previously in this hearing; is that correct?

A Yes, she did.

Q All right, could you please summarize for the committee what Ms. Smith's testimony contains?

A Ms. Smith added conditions waste-4 and -5. These address an unexpected facility closure and mitigation measure for no storage materials longer than 90 days at the site.

Q With respect to the noise testimony, who is the author of that testimony?

A One moment, please.

That was Kisabuli.

Q And he also has previously testified in this proceeding?

A Yes, he has.

Q Could you please summarize what his changes were, are that are contained in there?

A Kisabuli added conditions noise-6 and noise-8; rather, they were rewritten to eliminate the term "noisy" while making the condition clearer. Minor revisions were also made to the overall document. They added mitigation measures for the -- or possible mitigation content for the control of noise are in 6 and 8.

Q And respect to hazardous material handling, please tell us who the author of that testimony is?

A Mr. Joseph Loyer.

Q And Mr. Loyer has also previously testified in this proceeding?

A Yes, he has.

Q Please summarize his changes?

A Mr. Loyer revised his testimony to better address mitigation measures for, one, the accidental release of ammonia gas, and, two, chlorine and hydrogen gas release, and, three, fire and explosion from the use of natural gas. He included La Paloma's description of mitigation measures.

Q And to the best of your knowledge, these revisions were made at the request of the committee at the last hearing; is that correct?

A That is correct.

Q Okay, now let me turn your attention to what's been marked as Exhibit 55, it's a June 21st staff's final status report; do you have that in front of you?

A Yes, I do.

Q And you have the testimony errata of Mark Hesters?

A Yes, I do.

Q Could you please briefly describe the change that Mr. Hesters is making?

A Mr. Hesters originally provided for a one-size conductor for the transmission line to be a 1590 KC mil aluminum-clad, steel-reinforced cable; to provide more flexibility he has rewritten his testimony to allow to be a minimum-size conductor. This will allow flexibility for one or more other project proponents to utilize the same towers as La Paloma's.

Q Is there a correction that we need to make to Mr. Hesters's testimony?

A Yes, there is. On the first sentence of the paragraph under corrections and changes, approximately 13.6 should be 14.2 mile-long.

Q Okay, does that conclude your testimony?

A It does.

MR. OGATA: No further questions for Mr. Pryor.

MR. VALKOSKY: Mr. Thompson.

MR. THOMPSON: We have none. Thank you very much.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Questions from anyone here present for Mr. Pryor?

(Witness excused.)

MR. VALKOSKY: Would you like to make the motion, Mr. Ogata?

MR. OGATA: At this time I'd like to have admitted into evidence Exhibit No. 46 and Exhibit No. 55.

MR. VALKOSKY: Is there any objection?

MR. THOMPSON: None.

MS. POOLE: None.

MR. VALKOSKY: No objection, we'll receive Exhibits 46 and 55 into evidence at this time.

(The documents referred to, having been previously marked for identification as Exhibits 46 and 55, were received in evidence.)

MR. VALKOSKY: With that, we'll now turn to the topics specifically on the agenda. First topic is land use.

Mr. Thompson, call your witness.

MR. THOMPSON: Thank you very much. If I may introduce those of us at the table here before I call Mr. Charles Smith -- in fact, Mr. Smith, you could, if you want to, come up and arrange your books we'll get started here.

To my immediate right in Mr. Bill Chilson from PG&E Generating Company, and to his right is Mr. Roger Garratt, who's project manager. Mr. Chilson is environmental manager on the project. And to the far right we have Bill Steiner, who is the environmental outside lead at URS-Greiner-Woodward-Clyde.

Scattered throughout the audience we have a number of people who are going to be our witnesses today.

Applicant would like to call Mr. Charles Smith. Stand -

-

MR. VALKOSKY: Swear the --

MR. THOMPSON: Mr. Valkosky, even though many of our witnesses have been previously sworn, I think that the record would be better suited if we had each of them swear today because the time between hearings.

MR. VALKOSKY: I certainly agree that the reminder never hurts.

Swear the witness, please.

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Whereupon,

CHARLES SMITH,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Smith, would you state your name for the record, please?

A Charles Smith.

Q And are the same Charles Smith who submitted prepared direct testimony that is contained in Exhibit 34 to this proceeding?

A Yes, I am.

Q And on -- am I correct that today you are here to sponsor Exhibit 1, AFC section 5.9 and appendix zero on land use

and the list of property owners; Exhibit 6, which is an errata to the AFC on the general plan amendment; Exhibit 16, which is part of the Kern County general plan amendment, circulation element, specifically; Exhibit 28, which is section -- Exhibit 28, which is a supplement to the AFC and specifically section 3.6, land use, within that; is that correct?

A That is correct, and as you noted, Exhibit 16, the general plan amendment, is, relates to the circulation element. So it could be entered both either here or land use or in traffic.

Q Thank you. Do you have any corrections, additions or deletions to make to your material?

A No, I do not.

Q Would you please briefly summarize your testimony for the committee and the population?

A Sure. I prepared a land use section, the AFC. We looked at local land use plans, ordinances and policies that included both federal, state, regional and local plans. Examples might be the general plans of Kern County, City of Buttonwillow, the City of McKittrick. Reviewed existing and planned land uses in the vicinity of the project, and the consistency of proposed land uses -- excuse me -- of the proposed project with those land uses.

And based on that analysis, determined that the project would be consistent with those plans, ordinances and policies and would present no direct, indirect or cumulative land use conflicts with existing and planned land uses; determined that the project would result in no significant unmitigable land use impacts.

And I've reviewed the staff's conclusions and the final staff assessment and concur with their conditions of certification. And I have no further recommendations.

Q So you would recommend to La Paloma Generating Company that they accept the staff's conditions of certification and verification thereto?

A Yes, I would.

MR. THOMPSON: Thank you very much.

Mr. Smith is tendered for cross-examination.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: Staff has no questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Smith, what's the status of the easement negotiations for the facility's linear lines, the water line, the transmission line, things like that?

THE WITNESS: I have not participated in those negotiations specifically. Perhaps --

MR. THOMPSON: Mr. Valkosky, if it's acceptable, we can ask that question of Mr. Garratt. I think

Mr. Garratt has been more intimately involved in those negotiations, probably has better knowledge.

MR. VALKOSKY: Okay. Please.

MR. GARRATT: Go up to the stand?

MR. VALKOSKY: Pardon me?

MR. GARRATT: You want me to go up to the stand or just

--

MR. VALKOSKY: No, could you go up there, please. And also administer the oath to Mr. Garratt.

Whereupon,

ROGER GARRATT,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Garratt, would you state your name for the record, please?

A Roger Garratt.

Q And are you the same Roger Garratt whose resume is -- and testimony is contained in Exhibit 34 to this proceeding?

A Yes, I am.

MR. THOMPSON: Thank you very much.

Mr. Valkosky.

MR. VALKOSKY: Would you like me to repeat the question, Mr. Garratt, or --

WITNESS GARRATT: Yes, please.

MR. VALKOSKY: Okay, I'd just like to know the status of the easement negotiations for the linear facilities associated with the powerplant?

WITNESS GARRATT: They are approximately 95 percent complete. So we have a couple different parcels that are not yet finalized, but the vast majority are.

MR. VALKOSKY: For which particular facility, the water line, the transmission line?

WITNESS GARRATT: For the -- well, I would say across the board there are gaps.

MR. VALKOSKY: Okay, now when do you intend to finish these negotiations?

WITNESS GARRATT: We would obvious -- I guess the obvious answer is as quickly as possible. The -- we have been working on right-of-way easements for the past year, and we would hope to have all of the easements wrapped up before October.

MR. VALKOSKY: Okay, in your opinion, will you be able to negotiate all of these easements or will you have to resort to eminent domain?



WITNESS GARRATT: We would hope to negotiate all of the easements. As you probably know, PG&E Gen does not have the power of eminent domain.

MR. VALKOSKY: Okay, how about the status of the railroad crossing applications? I understand from the testimony that you'll have to negotiate to -- with UP?

WITNESS GARRATT: Now you're getting a little far afield of my expertise. I believe, do you know the answer, do we have Ernie here today?

VOICE: Ernie will be here later in the day.

WITNESS GARRATT: Okay, we have a witness here later in the day who has been dealing with the railroads in our behalf who would be much more qualified to answer that. I mean, my general impression is those are all moving along --

MR. VALKOSKY: Okay, I --

WITNESS GARRATT: -- quite well, but I can't give you specifics.

MR. VALKOSKY: Mr. Thompson, is that your traffic witness, I mean, I can --

MR. THOMPSON: Well, it, I'm not exactly sure, but with your permission, we'd like to handle either one of two ways. Mr. Garratt can get on the phone and find out the exact status of that and when he takes the stand in another area we can ask him to bring that up to speed; or if our other witness comes, we can -- and has intimate knowledge of it -- we can put that witness on.

But if I could ask Mr. Garratt to make some calls to get that information then I'll --

MR. VALKOSKY: Okay, so also I'm interested in the status of -- understand you'd need a highway encroachment permit, too, to do the construction? You'll be within the highway right-of-way? Are you prepared to --

WITNESS GARRATT: No, that --

MR. VALKOSKY: -- indicate the status of that permit or not?

WITNESS GARRATT: No.

MR. THOMPSON: Could we --

MR. VALKOSKY: All right.

MR. THOMPSON: --= combine that one with the railroad?

MR. VALKOSKY: We can.

WITNESS GARRATT: I know that, I mean, I know in terms of those kinds of permits with the highway and with the -- there's a number of other encroachment permits that they're all well underway.

MR. VALKOSKY: Okay, my chief concern is I'm just, I just want to make sure that these are moving along and that we

won't be surprised down the road by some unforeseen difficulty in obtaining these. It's really what I want to know, okay.

MR. THOMPSON: We understand.

MR. VALKOSKY: All right, Mr. Thompson, we'll put that one on hold and you can fill us in either when Mr. Garratt gets the information or when your other witness appears.

MR. THOMPSON: Thank you.

(Witness Garratt excused.)

MR. VALKOSKY: Any questions on land use from any of the other parties or anyone here present?

Thank you, Mr. Smith.

(Witness Smith excused.)

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: Thank you, Mr. Valkosky. Staff's witness is Amanda Stennick.

Whereupon,

AMANDA STENNICK,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OGATA:

Q Ms. Stennick, what is your job title at the energy commission?

A I'm a planner-2 with the energy commission.

Q And what are your job duties there?

A Specifically, I provide an analysis of potential impacts, identification of mitigation measures, preparation of testimony and project monitoring to ensure compliance with local, state and federal environmental laws and regulations.

Q Do you have before you your testimony in area of land use?

A Yes, I do.

Q Did you write this testimony?

A Yes.

Q You have any changes or corrections to this testimony?

A No, I don't.

Q Would you please summarize your testimony for the committee and the public?

A Okay, in preparing the land use testimony on La Paloma, I assessed the conformity of the project with the Kern County general plan and plan elements and zoning ordinance. I analyzed the potential of the project to have direct, indirect and cumulative land use impacts.

In preparing my analysis, I relied on information presented in the AFC, reviewed the Kern County general plan and plan elements and zoning ordinance and spoke with David Rickels,

senior planner with the Kern County planning department regarding the county's conditional use permit for this type of project, absent the commission's jurisdiction. Mr. Rickels also reviewed and commented on the final staff assessment.

As was stated earlier, in order for the project to be consistent with the Kern County general plan, the project required an amendment to the circulation element of the general plan. Regarding deletion of three miles of future arterial and collector highway alignments, the Kern County planning department initiated the request for a general plan amendment to delete these three miles, and the Kern County board of supervisors adopted the general plan amendment on December 7th, 1998, approving the request.

Other issues that arose in the analysis was, were the requirements from division of oil and gas, geothermal resources, because the project is located within the administrative boundaries of the Asphaulto oilfield. La Paloma has, is coordinating activities with the division of oil and gas and will comply with OSHA regulations in -- and to ensure safety with the construction of the transmission lines. The transmission line safety and nuisance section of the staff assessment has mitigation measures proposed for that.

In addition, La Paloma has proposed mitigation for the project. They will comply with regulatory agency permits and requirements concerning land use issues. They propose to develop small-scale construction scheduling where appropriate to avoid conflicts with agricultural operations. They will minimize direct adverse effects on agricultural areas and other important land use features, and time construction activities to avoid impacts to cultivated areas to the extent practical.

They've also proposed to replace any agricultural facilities, which is irrigation systems, fences and gates if they are damaged during construction. Normally Kern County would require a conditional use permit for this type of project, and because local agency requirements are superseded by energy commission action on certification, staff has required La Paloma to prepare a development plan that addresses Kern County's zoning conditions of approval into the proposed conditions, and that's stated as land use-1.

To summarize land use-1, it requires the project owner to submit a development plan for the site to Kern County for their review and comment, and the development plan will include all of La Paloma's proposed mitigation for the project. And land use-2, under the conditions of certification, requires the Applicant to comply with the requirements of OSHA and the Department of Oil & Gas & Geothermal Resources.

My analysis indicates that the project by itself and cumulatively will have no land use impacts that cannot be mitigated to a level below significance; if staff's conditions of certification are implemented, the project will comply with all applicable laws, ordinances, regulations, standards, plans and policies.

Q Does that complete your testimony?

A Yes.

MR. OGATA: Thank you. Ms. Stennick is available for cross-examination.

MR. VALKOSKY: Mr. Thompson.

MR. THOMPSON: No questions. Thank you.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Ms. Stennick, just two questions. On pages, I believe it's 127 and 128 of your portion of the FSA --

THE WITNESS: I, excuse me, I don't have a copy of the -

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MR. VALKOSKY: I'm sorry.

THE WITNESS: I only have my staff analysis.

MR. VALKOSKY: So I correct myself.

THE WITNESS: Page 127?

MR. VALKOSKY: I'm sorry, it's pages 128, 129 and 130 of the FSA which we've designated as Exhibit 35. As I read your testimony, you have a list of 16 various items which would be normally included in a county conditional use permit; is that a correct --

THE WITNESS: That's correct.

MR. VALKOSKY: Okay, is it your intention that each of those 16 items be included in the development plan that you referred to in condition land use-1?

THE WITNESS: There are some that are site-specific, particularly the requirement for the eight onsite parking spaces. A number of these proposed conditions would be met under air quality requirements or socioeconomics or worker health and safety. I wanted to include the body of the conditions as presented by Kern County.

MR. VALKOSKY: Okay, which of those conditions would be appropriate for inclusion into the development plan?

THE WITNESS: Well, just to be inclusive, I would state that all of the conditions be met and at the time of the issuance of the building permit when Kern County has had a chance to review the site plan, I would expect that all of these would be met, or there would be indication that in the future they would be met.

MR. VALKOSKY: And --

THE WITNESS: Such as --

MR. VALKOSKY: I'm sorry, go ahead.

THE WITNESS: Well, the development plan certainly would indicate the presence of parking spaces and the development plan would show the size of the parking spaces, and the development would also indicate the lighting would be directed away from adjoining properties and public roads.

MR. VALKOSKY: Is it your understanding that by meeting your land use condition 1, the Applicant will also be complying with the county's conditions for conditional use permit?

THE WITNESS: Yes.

MR. VALKOSKY: Last question, Ms. Stennick. Did you analyze to see whether the project is compatible with BLM's Caliente resource management plan? That's mentioned in your testimony.

THE WITNESS: Yes, that, I reviewed the land use plan and the proposed, any proposed mitigation was to be in the biological resources section.

MR. VALKOSKY: Okay, but, and it is your understanding that it will be compatible, though?

THE WITNESS: With mitigation proposed in biology.

MR. VALKOSKY: Correct. Okay, thank you.

MR. LAURIE: Ms. Stennick, I want to make sure that there are no loose ends that we end up with as result of any conditions that we attach to the project, so I'm going to ask for clarification of land use-1. Now as I understand the intent of land use-1, it is to ensure compliance with the county's local ordinances, more specifically, the local ordinance that would require a conditional use permit.

Land use-1 is intended to be in lieu of the requirement of requiring a conditional use permit. Is my understanding correct?

THE WITNESS: Correct.

MR. LAURIE: When the Applicant submits a development plan and as part of that, part of the requirements we have told the Applicant which included the development plan and we have provided the county an opportunity to review and comment; is that correct?

THE WITNESS: That's correct.

MR. LAURIE: Please explain then what happens. So let's say I'm Kern County planning director, I review and comment and either A, nobody likes what I have to say, or B, there's disagreement; say I have strong objection to the proposal. What happens, what is the jurisdiction of this body, what is the jurisdiction of the project manager, what happens in the environmental review if the project is at all changed as a result of modifications to the development plan?

THE WITNESS: Well, because we are acting in lieu of any local land use requirements or ordinances, we have to, the energy

commission has to ensure that all of the local ordinances are met. If Kern County reviews the development plan and site plan and has comments that they would like to see some aspect of that modified in any way, I would submit that, I would, of course, speak with the -- respond to the comments, and if the comments are such that the project has to be amended in any way, I would propose that the development plan include any requirements proposed by Kern County planning.

MR. LAURIE: Well, what if the commission disagrees with the demands of Kern County?

THE WITNESS: Excuse me?

MR. LAURIE: What if the commission either doesn't agree or doesn't entirely share the view of the demands made by the county?

THE WITNESS: I don't expect that the county is going to have major revisions to the project as it is. They've had ample opportunity to review and comment on the project as it is, and I've spoken several times with David Rickels regarding the project. They've, they'd submitted a list of proposed conditions of certification -- excuse me, proposed conditions that they would impose if they were the lead agency on the project.

MR. LAURIE: And those proposed conditions have environmental ramifications that either are being or must be analyzed as part of the commission's environmental review?

THE WITNESS: Yes, that's correct.

MR. LAURIE: If the county proposes modifications which have not as yet been reviewed environmentally, is a supplemental environmental review then necessary if there's a modification of the project; if the county proposes modifications and you want to accept those modifications, and we have not as yet reviewed those modifications from an environmental perspective, must we conduct that review?

THE WITNESS: Your question is a very general question and a general answer would be yes. However, given the conditions that Kern County has proposed, I don't anticipate either Kern County or the energy commission or La Paloma finding any difficulty meeting the -- meeting and adhering to the conditions of certification.

MR. LAURIE: And what I'm trying to get at is I want to make sure everybody understands what the process is going to be, because there may be negotiations between the county and the Applicant and the commission, I don't know. I want to make sure all parties understand then what happens if there is no full concurrence or if there are modifications that have not as yet been anticipated.

That was not a question that requires a response.

Thank you.

MR. VALKOSKY: Do you have anything further, Mr. Ogata?

MR. OGATA: Nothing further.

THE WITNESS: I would just like to say that the conditions of approval or the conditions -- excuse me, the conditions proposed by Kern County are very general, and have to do with the method of water supply and sewage disposal meeting the requirements of Kern County health department, which would typically be met, you know, in the water section. The project shall comply with any requirements of the San Joaquin valley unified air pollution control district, which is certainly a requirement in the air quality section of the staff assessment.

MR. VALKOSKY: Is it fair to say that for the most part these conditions are those which can be met simply by complying with applicable local ordinances and laws?

THE WITNESS: Yes, that's correct.

MR. VALKOSKY: Thank you. Is there anything else for Ms. Stennick from anyone? Anything else on the topic of land use from anyone here present?

Okay, Ms. Stennick, thank you.

THE WITNESS: Thank you.

(Witness excused.)

MR. VALKOSKY: Okay, Mr. Thompson or Mr. Ogata, do you have any exhibits pertaining to land use that you'd like to move in at this time?

MR. THOMPSON: Thank you, yes. We'd like to move in Exhibit 16, which is the Kern County general plan amendment, specifically the circulation element, testified to by Mr. Charles Smith.

MR. VALKOSKY: Any objection to admitting Exhibit 16?

MR. OGATA: I guess as a clarification, it appears Exhibit 16 consists of two parts. Are we moving in entire exhibit or just the part with respect to the general plan?

MR. VALKOSKY: I would assume the portion reflecting the general plan amendment.

MR. OGATA: I've no objection to that.

MR. VALKOSKY: Mr. Thompson, did you hear the qualification on Exhibit 16? We're just talking about, I assume, we're just talking about the portion of Exhibit 16, since it refers to multiple topics, portion we're talking about now pertains only to the general plan amendment?

MR. THOMPSON: That, actually, the injection well permit portion, I think, was already, we've already had Mr. Ouelette on the stand on that, and I think --

MR. VALKOSKY: And --

MR. THOMPSON: -- and so I think that completes the sponsorship of that exhibit from Applicant's standpoint.

MR. VALKOSKY: Okay, as I recall it was contingent upon staff being able to go back into the water area. We'll address that later tonight, I think. That's what happened in April.

MR. OGATA: Yes, that's fine. Mr. Thompson has refreshed my memory about that, so we have no objection to the entire exhibit being admitted.

MR. VALKOSKY: Oh, okay. Ms. Poole, any objections?

MS. POOLE: No.

MR. VALKOSKY: Thank you. With that, Exhibit 16 will be admitted.

(The document referred to,  
having been previously marked  
for identification as  
Exhibit 16, was received in evidence.)

MR. VALKOSKY: Last call for any comments from the public on the topic of land use.

There are none, okay. The next topic is visual resources.

MR. THOMPSON: Applicant would like to call Mr. Larry Headley, please. Mr. Headley has not been sworn. Whereupon,

LARRY HEADLEY,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Headley, will you please state your name for the record?

A Lawrence Headley.

Q And are you the same Mr. Headley whose prepared testimony is contained in Exhibit 34 to this proceeding?

A I am.

Q And am I correct that today you are here to sponsor Exhibit 1, which Applicant's AFC section 5.13, visual resources; Exhibit 12, which is a supplement to the AFC, specifically section 3.7; Exhibit 28, another supplement to the AFC, supplement no. 2, again section 3.7, which is visual resources; is that correct?

A That is correct.

Q Do you have any corrections, additions or deletions to make to that material?

A I do not.

Q Would you please summarize the visual resources sections?

A I prepared the visual resources assessment for the AFC and the supplements to the AFC. They were done in conformance with CEC guidelines. The existing environment was characterized in two steps. First, sensitive public views that would include



project facilities were identified. Sensitivity was estimated using guidelines primarily drawn from concepts and methods of visual analysis used by several federal agencies.

A review of literature and maps, along with an inspection of the project vicinity on May 4th and May 18th of 1998 served to identify features and public use areas of cultural, historic, recreational and esthetic significance. The sensitivity analyses led to an identification of the views that were most critical with respect to the visual resources assessment.

Second, the character and quality of these critical views were evaluated as a baseline for visual impact analyses conducted later. Panoramic photographs were taken during the May 18th, 1998, site visit, and these photographs served to document the character of the potentially affected sensitive public views.

The assessment of visual impacts was directed towards these critical views, particularly those of the powerplant and transmission line routes. From a preliminary assessment of the construction and operation of offsite pipelines, it was determined that there would be no potential for significant visual impacts due to these project features. The routes either would not be within public views or if they would be the visual impacts of construction and operation would be temporary.

The range of critical views was considered and several representative views in which the proposed facilities would be most noticeable were selected for detailed analysis. To aid the public in understanding the degree to which the project would be visible, photosimulations of the powerplant were prepared by the project engineers and presented in the AFC.

I was responsible for the photosimulations of the transmission lines. These simulations consisted of three-dimensional computer models of the facilities superimposed on photographs representing the critical views. My assessment of the magnitude and significance of visual impacts was based partly on these simulations. Criteria for the magnitude and significance of visual impacts included how noticeable the impact would be, the sensitivity of the potentially affected views, the duration of the impact, and whether or not the impact would be consistent with laws, ordinances, regulations and standards applicable to the protection of visual resources.

My conclusions are that there would be no significant visual impacts due to the project and that it would be consistent with laws, ordinances, regulations and standards.

Q Thank you. Have you had an opportunity to review the staff, final staff assessment, specifically, that portion of the FSA on visual resources?

A Yes, I have.

Q And within that, the conditions of certification and verification, have you reviewed those?

A I have.

Q And do you recommend to La Paloma Generating Company that they accept those conditions and verifications?

A I do.

MR. THOMPSON: Thank you very much.

Mr. Headley's tendered for cross-examination.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Headley, when you evaluated the transmissions line routes, did you also evaluate the alternative known as 1-B?

THE WITNESS: 1-B was the reroute around the fish and game?

MR. VALKOSKY: That's correct.

THE WITNESS: Supplement no. 2. I did, and it was not within any moderately to highly sensitive views. So I did not proceed with an analysis beyond that assessment.

MR. VALKOSKY: Okay, so in other words, your existing assessment would also apply to that route, 1-B?

THE WITNESS: Yes. It applied, my assessment applied to the AFC as well as to both supplements.

MR. VALKOSKY: Okay, in performing your visual impact analysis, did you perform it based on the transmission structures being poles as well as being possibly lattice towers, or not?

THE WITNESS: In the vicinity of where there would be moderately to highly sensitive views affected I only analyzed poles because it was only poles that would be considered in those locations.

MR. VALKOSKY: Okay, now I understand from other portions of the testimony that there may be a need for towers, at least in the vicinity of the midway substation. Would those make any difference, if they were employed, would they make any difference in your visual assessment?

THE WITNESS: In the vicinity of the midway substation. Give me some help here, I thought we we're going -- oh, oh, out at Buttonwillow?

MR. VALKOSKY: At Buttonwillow, yes.

THE WITNESS: At Buttonwillow, no, it would not make any difference. There's a confluence of a great number of transmission line routes in that vicinity. The existing visual conditions have been so degraded as such that the addition of additional tower would not make a difference, an adverse impact.

MR. VALKOSKY: Thank you. Any redirect,

Mr. Thompson?

MR. THOMPSON: No, sir, thank you.

MR. VALKOSKY: Anything from anyone here present for Mr. Headley?

Thank you, sir.

(Witness excused.)

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: Staff's witness is David Flores.

Whereupon,

DAVID FLORES,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OGATA:

Q Mr. Flores, what is your job title at the energy commission?

A My title is planner-1.

Q And what are your duties?

A My duties are to prepare environmental documents for proposed powerplant projects in the area of traffic and transportation, land use and visual resources.

Q Do you have before the -- your testimony in visual resources?

A Yes, I do.

Q Did you write this testimony?

A Yes, I did.

Q You have any changes or corrections you'd like to make at this time?

A Not at this time.

Q Would you please summarize your testimony for us?

A Yes. Staff analyzed and focused on whether or not the La Paloma Generating Project would cause any significant adverse visual impacts and whether the project would conform with the local LORS as established in the staff report. As indicated in my report, staff looked at various state policies determining whether or not these were in fact within a state scenic highway and also looked at the Kern County general plan policies, essentially their open space element, to determine if there is any conflict or consistency with those documents.

Essentially, staff's position is that they do meet the requirements under Kern County and also there are no scenic highways designated within the state plan.

Staff also reviewed Mr. Headley's report on visual analysis, and although the methodology is different from the staff's, the conclusions reached were identical. As provided in the report, beginning on page 184 through 185, staff has provided tables, essentially describing the analysis and the conclusions

reached at each of the key observation points that were identified in the staff report.

Staff also reviewed the visible plumes from the powerplant that are discussed in my report, beginning on page 190 through 194, and determined that based on the type of construction and the various components of the plant, and also looking at the various weather conditions and the small number of residents within the area, staff determined that there would be no visual impacts.

Also staff looked at the various modifications that were identified later, that later submissions, as to the water tank and also the communication towers and also the linear facilities, and found that they were not significant also.

Staff also identified cumulative impacts and also facility closure and also compliance with the LORS requirements, and found that they are in fact -- meet the LORS requirements. Staff has reviewed the mitigation measures that were identified by the Applicant and the conclusions reached by staff indicate that we are in agreement, although staff did identify some additional mitigation measures and just expanded further within the mitigations.

And one of them was for the lighting plan, and just staff is requesting that an additional -- this lighting plan be submitted for our review. Also that the tank and the colors of the powerplant be submitted for our review.

Essentially that concludes my report at this point.

Q To reiterate, then, your conclusion is that with proposed mitigation measures, visual impacts of this powerplant will be less than significant?

A That's correct.

Q You were here earlier when we presented the testimony of Mark Hesters with respect to the changing condition of the conductor size of the transmission line towers?

A Yes.

Q Given what you know now, do you believe that an enlargement of those towers will present any visual impacts problem?

A No, I don't.

MR. OGATA: I've nothing further.

MR. VALKOSKY: Thank you.

Any cross, Mr. Thompson?

MR. THOMPSON: No, we have none. Thank you.

MR. VALKOSKY: Two questions, Mr. Flores. One, are all the mitigation measures identified by Applicant and by staff included in the conditions of certification contained in your portion of Exhibit 35?

THE WITNESS: Yes, they are.

MR. VALKOSKY: Thank you. Next question, on page 196 of Exhibit 135 (sic), you indicate the desirable contents of a closure plan. In your opinion, should those contents be specified in a particular condition of certification, or are you satisfied that the general requirements, the general compliance requirements, excuse me --

THE WITNESS: I'm satisfied --

MR. VALKOSKY: -- will address those?

THE WITNESS: -- with the general --

MR. VALKOSKY: General requirements are sufficient then?

THE WITNESS: Yes.

MR. VALKOSKY: Okay, thank you. Are any other questions for Mr. Flores?

Are none. Are there any other questions, comments and/or observations on the topic of visual resources?

With that, we'll close visual resources. Thank you, Mr. Flores.

(Witness excused.)

MR. VALKOSKY: The next topic will be traffic and transportation.

MR. THOMPSON: Applicant would like to recall Mr. Charles Smith, on topic of traffic and transportation.

Mr. Smith has been previously sworn today. Whereupon,

CHARLES SMITH,  
having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Would you please state your name for the record again?

A Charles Smith.

Q And right now you are going to be testifying in the area of traffic and transportation; is that correct?

A Yes, it is.

Q You are the same Charles Smith whose prepared testimony we have identified as part of Exhibit 34 to this proceeding?

A Yes.

Q And today you are testifying and going to sponsor Exhibit 1, AFC section 5.11 on traffic and transportation; those portions of Exhibit 12 and 28 which are supplements to the AFC, sections 3.6, which also deal with traffic and transportation; and the recently introduced exhibit numbers, 50, which is identified as La Paloma traffic analysis, dated May 21, 1999; Exhibit 51-A, which is a correspondence from the California Department of Transportation to the Applicant, dated June 2nd, 1999; and Exhibit 51-B, which is the correspondence from the Applicant to the

California Department of Transportation, dated June 11; is that correct?

A That is.

Q Would you please summarize for the committee and the public your testimony on traffic and transportation?

A I prepared the traffic and transportation section of the AFC, involved review of local transportation plans, ordinances, and policies, analyzed potential impacts on the transportation system within the vicinity of the project, and the analysis included the local and regional transportation network, highways and roadways, trip generation during project construction and operation, and that would include construction worker commute trips, truck and other construction equipment trips, delivery of hazardous materials. Looked at existing average daily traffic counts and levels of service, distribution of potential project-generated trips, and then we looked at alternative transportation modes such as existing rail facilities.

Based on the analysis, I determined the project would be consistent with applicable plans, ordinances and policies and determined that with implementation of mitigation measures that are proposed in AFC, the project would result in no significant unmitigable traffic and transportation impacts. We reviewed the staff's conclusions in the final staff assessment and concur with their conditions of certification and have no further recommendations.

Q Thank you. Would you briefly for the members of the public here today summarize what's contained in recently identified Exhibits 50, 51-A and 51-B?

A Right. One of the requirements was that we conduct a detailed traffic study out here to look at existing traffic conditions and what the impacts of project-related traffic would be. And one of the issues that arose had to do with construction traffic during the project's peak construction period. That was a two-month construction period, and the specific issues of concern were traffic at the intersections of SR-58 and 33, and also state route, SR, state route, excuse me, SR-33 and Reserve Road.

And we did the traffic analysis, looked at those two specific issue areas with an eye towards determining whether any specific mitigation was needed during that two-month peak construction period. And the conclusion which we reached, with the concurrence of the California State Department of Transportation, was that there was no mitigation which needed to be implemented immediately, that Cal-trans would have a monitor check things randomly during that period. If it turned out that traffic impacts needed a flagman or someone to kind of help monitor traffic conditions during either the morning or the evening peak hours, commute hours for the construction workers,

that a flagman would be provided during that PM peak hour, and during that two-month peak construction period.

So that was the conclusion, and the correspondence which you refer to is one letter from Cal-trans to the Applicant basically explaining that, and then our letter back concurring with what they said.

Q Thank you very much. Do you have anything else to add?

A No, I do not.

MR. THOMPSON: Thank you. Mr. Smith is tendered for cross-examination in the area of traffic and transportation.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Smith, help me in understanding this. Do you have the staff's FSA, Exhibit 35, on traffic?

THE WITNESS: Excuse me, the final staff assessment, yes.

MR. VALKOSKY: Yes, if you could look at page 150 of that and it's condition trans-7.

THE WITNESS: Okay.

MR. VALKOSKY: Okay, as I read it, basically that would require the Applicant to provide a study to determine if additional roadway improvements for left and right turn channelization will be required, and as I read your Exhibit 51-A, which is the June 2nd, 1999, letter from Cal-trans, the second bullet on page 1 says that the channelization would be an excessive mitigation of a temporary condition.

With that as background, is it your view that condition trans-7 is still necessary?

THE WITNESS: Well, remember, trans-7 just says that we'll conduct the analysis; it doesn't say that we will make the improvement. so we've actually already complied with trans-7 because we conducted the analysis.

MR. VALKOSKY: That's what I mean, so in your opinion, you've already complied with trans-7?

THE WITNESS: True.

MR. VALKOSKY: That's --

THE WITNESS: We already have complied.

MR. VALKOSKY: -- that's what I'm trying to get at.

THE WITNESS: Yes.

MR. VALKOSKY: Okay, thank you.

Mr. Thompson, do you have any -- it's also appropriate here -- do you have any further information on my earlier question about the status of the railroad crossing permits or the status of the encroachment permits?

MR. THOMPSON: Not yet. We expect to have that this afternoon.

MR. VALKOSKY: Okay, thank you. Any redirect for Mr. Smith?

MR. THOMPSON: No redirect.

MR. VALKOSKY: Okay, any other questions for Mr. Smith?

Thank you, sir.

THE WITNESS: Thank you.

(Witness excused.)

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: Staff's witness is David Flores.

Whereupon,

DAVID FLORES,  
having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

MR. OGATA: Mr. Flores, you've been previously sworn.

DIRECT EXAMINATION

BY MR. OGATA:

Q Do you have before you the testimony in the area of traffic and transportation?

A Yes.

Q And you wrote this testimony?

A Yes, I did.

Q Do you have any corrections you'd like to make at this time?

A Other than the discussion earlier regarding condition 7 being eliminated.

Q Is your proposal to eliminate condition trans-7?

A Yes.

Q Okay, could you please go ahead and summarize your testimony for us?

A Yes. Staff reviewed the analysis provided by the consultant in the area of traffic and transportation, and also reviewed the laws, ordinances and regulations and standards for this area, and those are listed as part of your report.

As indicated in our report, on September 24th, staff did contact Cal-trans representatives to look at a portion of state route 58 near the McKittrick school, elementary school, to determine if sufficient safety measures such a guard rails were in place to protect the school. As indicated in report, in October 17th of 1998 Cal-trans representatives contacted staff and indicated upon their field investigation by their personnel in the area that no additional safety measures were necessary.

Based upon this information, staff has not recommended mitigation measures, but again staff further did some investigation in that we contacted the California highway patrol



to determine if there's been any excessive accidents in this area, at the school area. And according to the California highway patrol, they've indicated just one accident has occurred, which was a motorcycle accident with a big rig, and that was approximately four years ago.

And so at this point, the incidence of accidents in this, in the area were mostly towards town, township of McKittrick, and so at this point the California highway patrol did not have any concerns.

Staff also looked at the linear facilities and also the cumulative impacts as discussed within our report, and we have established our conditions of certification based upon staff's analysis and also based upon the conclusions reached by the Applicant's traffic and transportation consultant.

That completes my report.

Q So again your conclusion is that with the mitigation measures and the conditions that you're proposing, you find that there will less-than-significant impacts in traffic and transportation, this area?

A Yes.

MR. OGATA: No further questions. He's available for cross-examination.

MR. VALKOSKY: Thank you, Mr. Ogata.

MR. LAURIE: Mr. Flores, the speed limit along 58 outside of the school zone is what?

THE WITNESS: I believe it's 50 miles an hour, according to the California highway patrol.

MR. LAURIE: And is there a marked school zone speed limit in front of the school?

THE WITNESS: No.

Other than the 25-mile zone?

MR. LAURIE: Other than the standard state law requirement?

THE WITNESS: No.

MR. LAURIE: Are you aware of whether or not in front of McKittrick school there is a marked school zone for speed limit purposes?

THE WITNESS: Yes, there is.

MR. LAURIE: And what is the speed limit, to your knowledge, in front of McKittrick school?

THE WITNESS: 25.

MR. LAURIE: In your opinion, need there be any modification to that state requirement in light of the additional truck traffic, including construction truck traffic that will be occurring?

THE WITNESS: My recommendation would be that an additional sign be placed just as you come down the grade, because

the sign itself is in front of the school and so I would recommend that an additional school sign be placed just as you're coming down the grade of 58.

MR. LAURIE: And is that currently proposed as a condition?

THE WITNESS: No, it's not.

MR. LAURIE: Is it your recommendation that such be a condition?

THE WITNESS: Yes, it would be.

MR. LAURIE: Thank you.

MR. VALKOSKY: Mr. Flores, is incorporating the placement of an additional sign referring to your additional or your existing conditions of certification, is there an appropriate place to insert the placement of an additional sign?

THE WITNESS: Actually the -- we could modify trans-7 with --

MR. VALKOSKY: We did away with trans-7.

THE WITNESS: Right. I just thought maybe we could put that back in and actually modify that, but --

MR. LAURIE: While you're pondering that, Mr. Flores, is it only Cal-trans that has jurisdiction over the placement of signs?

THE WITNESS: Yes, that's correct.

MR. LAURIE: And so is proper procedure to make a request with Cal-trans for that purpose?

THE WITNESS: This brings me back to when I worked for Yolo County, because there was request made by public works for additional signage along state highway routes, and essentially they would require, Cal-trans would require, a study be conducted before any additional signs be installed. So now that I think about it, there would have to be a study before Cal-trans would put in a sign to determine whether or not it's appropriate.

MR. VALKOSKY: With that, do you still recommend that an additional sign be placed?

THE WITNESS: At this point, no. Because generally as you come down the grade there is a speed limit sign that indicates 20, just as you're coming down. So, and then they gear up and then there's a sign for the school that indicates 25 miles an hour, so essentially you're coming down as down a grade at 20 miles and hour, then you're picking up and all of a sudden you see the sign for the school.

So essentially they have to, I mean, I could make a recommendation to Cal-trans regarding this issue, but at this point, as to whether or not an additional traffic study is necessary just for additional signage --

MR. VALKOSKY: Do you know who does local traffic enforcement? Is CHP, local, county?

THE WITNESS: The CHP.

(Counsel and clients confer.)

MR. VALKOSKY: Mr. Ogata, your -- Mr. Ogata, would you like a brief recess before your redirect?

MR. OGATA: I was just trying to figure out if there was an appropriate place to put this into the condition, and we're looking at condition trans-4. That's related to construction with respect to the county. Trying to determine whether inserting Cal-trans into that condition would make any sense or not. I think it's something we need to think about, actually, Mr. Valkosky, I'm not sure we can do this right here without thinking about all the ramifications of imposing something --

MR. VALKOSKY: Well --

MR. OGATA: -- that seems as simple as a sign but may have to go through state --

MR. VALKOSKY: -- well, we --

MR. OGATA: -- bureaucracy --

MR. VALKOSKY: -- have a --

MR. OGATA: -- to get it done.

MR. VALKOSKY: -- you know, we can leave this open until after lunch, if that would provide you an opportunity.

MR. OGATA: What do you think.

MR. VALKOSKY: Or if a recess at this time would be beneficial, I mean, there are several options here.

THE WITNESS: From --

MR. LAURIE: Let me tell you what I am trying to recall. It is not my view that the evidence suggests any new study be conducted. Applicant has submitted a study, staff has submitted a study. I don't believe any new studies are adequate. I'm aware, however, that there will be independent truckers over which the Applicant has no control operating for a significant period of time during the construction period.

I want to ensure that there is adequate respect and knowledge about the fact that there are young people attending school in downtown McKittrick. Maybe we do not need a Cal-trans sign. I sense, however, because I have driven into town on more than one occasion, that something is necessary. I do not know what that is.

Do I believe it is legally necessary, no. Do I believe it is morally necessary, perhaps, and I'd like to have somebody think about that.

MR. OGATA: Commissioner Laurie, I think with respect to your concern about construction, trans-4 does address that the Applicant and Kern County take care of signing, lighting, traffic control device placement. So if that is the primary concern, that may, that concern may fall into trans-4.

With respect to trying to get a permanent sign, maybe the best we can offer at this point is a direction that staff attempt to work with Cal-trans or whoever may be necessary to have a sign installed and just a condition that we use our best efforts to get it done, as opposed to making a requirement that a sign be placed there.

MR. LAURIE: Yes, I do not want the record to reflect that I believe any additional studies are necessary. I do not believe that they are. And it may very well be that trans-4 will cover the matter in light of the fact that my biggest concern is construction, because you'll have individuals driving that are not necessarily familiar with the area.

MR. VALKOSKY: In the -- so, Mr. Ogata, if I understand your statement, it is essentially a staff commitment to explore with Cal-trans and the county the installation of additional signage during the construction period; is that correct?

MR. OGATA: I believe that that's a requirement now, in trans-4, for construction. If we're talking about a sign after construction, then again I think we can commit to using our best efforts to get a sign, installed short of having to prepare another study to get that sign done.

But again, I don't know exactly what the state would be for, if it's for appropriate placement of a sign because someone may hit the sign and sue the state, I mean, those are the things, I believe, that Cal-trans looks at besides the fact of whether or not a sign is needed. I think I agree we certainly have enough information about the necessity for the sign; it's probably more a study, an engineering study about the appropriate location of the sign so that it's useful and not harmful to traffic.

MR. THOMPSON: Mr. Valkosky, if I may?

MR. VALKOSKY: Please, Mr. Thompson.

MR. THOMPSON: Thank you. Exhibit 51-A, there is in the top bullet of the second page of that letter, indicates that Cal-trans safety operations branch personnel will visit the location after the Applicant has filed for a permit. It seems to me that if we can fold that into this inquiry, although this says state route 33 and Reserve Road, that's only a block away, and if we could enlarge this by one block, maybe we could have Cal-trans safety operations branch as part of this mix because I suspect they're a necessary element, and we could do it under this --

MR. VALKOSKY: Okay, that also applies to the construction period, talking about a flagman.

MR. THOMPSON: Right.

MR. VALKOSKY: Now we're talking about possibly a permanent sign that would be there. Is that something that you think can be expanded, or those discussions can be expanded to cover?

MR. THOMPSON: I think they can, you know, our contribution to the traffic during operations is minimal, but my suspicion is that once you have Cal-trans people out here and focused on the intersection I think it's fairly easy to enlarge that discussion.

MR. VALKOSKY: Okay, so is it fair to say that Applicant will then commit to explore this issue with Cal-trans?

MR. THOMPSON: It is fair to say that. We will do that.

MR. VALKOSKY: Thank you.

Okay, are there any other questions for Mr. Flores?

There are none. Thank you, sir.

(Witness excused.)

MR. VALKOSKY: Are there any exhibits which parties would like to move at this time?

MR. THOMPSON: Applicant would like to move Exhibits 50, 51-A and 51-B into the record, please.

MR. VALKOSKY: Okay, any objection?

MR. OGATA: No objection.

MR. VALKOSKY: Hearing no objection, Exhibits 50, 51-A and 51-B are admitted.

(The documents referred to,  
having been previously marked  
for identification as  
Exhibits 50, 51-A and 51-B,  
were received in evidence.)

MR. VALKOSKY: Are there any comments or observations from members of the public on the topic of traffic and transportation?

Seeing none, thank you.

(Panel confer.)

MR. VALKOSKY: All right, at this time we'd like to take five-minute recess. We will do socioeconomics before we break for lunch, however. Okay, does that work for everyone? Good. Reconvene in five minutes.

(Whereupon, a brief recess was taken.)

MR. VALKOSKY: Okay, if we can reconvene now, please, for the final topic which we'll do before we recess for lunch, is socioeconomics.

Mr. Thompson.

MR. THOMPSON: Thank you very much. Applicant would like to recall Mr. Charles Smith in the area of socioeconomics. Mr. Smith has been previously sworn on today's date. Whereupon,

CHARLES SMITH,  
having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Smith, would you please state your name for the record?

A Charles Smith.

Q And today you are testifying in the area of socioeconomics and are going to sponsor Exhibit 1, section 5.10, socioeconomics; is that correct?

A That's correct.

Q You have any corrections, additions or deletions to make to that material?

A No, I do not.

Q Would you please briefly summarize the socioeconomics material?

A I prepared the socioeconomics section of the AFC. This involved review of local socioeconomics plans, ordinances, and policies; evaluated the potential for project-induced changes on community services, infrastructure and related community issues such as environmental justice and things like employment, housing, schools, utilities, emergency services and financial payroll-related information.

Based on that analysis, I determined the project would be consistent with applicable plans, ordinances and policies and would present no project-specific or cumulative impacts to local communities, community resources or public services, and given the mitigation measures presented in the AFC, determined that the project would have no significant unmitigable socioeconomic impacts.

I've reviewed the staff's conclusions in the final staff assessment and concur with their conditions of certification and have no further recommendations.

MR. THOMPSON: Thank you very much.

Mr. Smith is tendered for cross-examination in the area of socioeconomics.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: Have no questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Smith, when we last had hearings in April, there was an issue in the worker safety portion which essentially linked worker safety concerns to the provision of adequate fire personnel and equipment. Are you familiar with that?

THE WITNESS: Yes, in general.

MR. VALKOSKY: Okay, I'd like two things. One, I'd like your opinion on whether those worker safety concerns are met by the present conditions of certification, and, two, I would like an

explanation and/or update on the discussions, the status of negotiations between Applicant and the Kern County fire department concerning the provision of additional equipment and personnel.

MR. THOMPSON: Mr. Valkosky, if I may, we would like also to present Mr. Roger Garratt who had, has been heading the effort on the fire equipment for Applicant, and if it please the committee, we'd like to put Mr. Garratt up, have him sworn ad act as a panel on this matter, and I'd ask Mr. Garratt to summarize the situation with the fire equipment, and then it may make it easier to respond to your question.

MR. VALKOSKY: That's acceptable.

MR. THOMPSON: Applicant would like to call Mr. Roger Garratt. Mr. Garratt has been previously sworn this morning.

Whereupon,

ROGER GARRATT,  
having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Would you please state your name for the record?

A Roger Garratt.

Q And, Mr. Garratt, am I correct that in the area of socioeconomics you are here to sponsor three exhibits, a rebuttal testimony in the area of the fire personnel and fire truck, that was Exhibit 39; Exhibit 40 which is a letter to the staff regarding fire protection services; and Exhibit 49, if I can find it in front of me, which is a letter from the Applicant regarding discussions of the new ladder trucks?

Would you please briefly summarize Applicant's position and some of the more recent events regarding fire equipment?

A La Paloma Generating and Kern County fire department have reached an agreement on a term sheet for the funding of the fire truck and the term sheet covers a number of different scenarios, the scenario of La Paloma as the only project that gets approved by the energy commission, the scenario if other projects get approved. And as I mentioned, we've reached agreement on the term sheet and now we're in the process of turning that term sheet into a legal agreement.

Q And could you give us an idea of when the truck would be purchased, when it would be delivered, anything like that?

A Okay, under the term sheet, upon the start of construction of La Paloma, we would place the purchase order for the fire truck, for the ladder truck. It's my understanding that it's about a one-year manufacturing cycle for these trucks. We would make the progress payments,

the -- so then the truck would be delivered approximately one year into the construction cycle.

And at that point, if another project which is in the same fire department response area has a favorable presiding-member-proposed decision from this commission, we would also advance to the fire department \$750,000 to cover the first year annual operating cost and we would advance \$85,000 to cover the first year of the replacement cost.

If no other project has that favorable decision at that point, then the fire department has two options. They can either redeploy the -- redeploy staff to provide staff coverage for the truck, or they can redeploy the truck to a different response area. And if they redeploy staff, then essentially we give them the truck; if they redeploy the truck they pay us back out of the proceeds from our property taxes.

And under the first scenario, we get paid back out of our property taxes to the extent that property taxes exceed the sum of the annual operating cost and the annual replacement fee.

So essentially this is a loan agreement.

Q Thank you very much. Mr. Garratt, do you have anything else?

A No, that's all.

MR. THOMPSON: Applicant would like to tender both Mr. Smith and Mr. Garratt from cross-examination in this area.

MR. LAURIE: Mr. Garratt, are you asking, are you proposing that the energy commission require a reimbursement agreement from future developers or is that something that you're handling through the county fire district?

WITNESS GARRATT: Within the -- well, if I have the power to ask the energy commission to do that, I would like to do that. The way that we have dealt with that in the agreement with the Kern County fire department is that one of the conditions of that agreement is that the fire department will ask the energy commission for future applicants to -- the fire department will ask for a condition of certification that requires that future applicants enter into a similar sort of agreement.

MR. LAURIE: What I'm interested in is seeing a note from county fire saying impacts have been mitigated. We will get that note upon your deal being done, I would anticipate. Beyond that, I'm not sure I care what your deal is, provided the evidence in the record is that the impacts have been mitigated.

My anticipation would be that as there may be additional projects that utilize the services of the area county fire department, not only would our staff be aware of the conditions that you have engaged with the fire department, but the fire department would be. And they do their own deal subject to your agreement with the fire department.



I guess what I'm getting at is that you're going to be entering into a reimbursement agreement which I don't believe is the jurisdiction of the energy commission. But I would be interested in staff's perspective on that as well.

So I'm not sure we have any obligation in that regard, other than noting that your impacts have been mitigated. If you disagree with that, then I'm going to be interested in you so advising.

WITNESS GARRATT: Yews, I do not disagree with that. The only comment that I would make is that as I read socio condition 2 in the supplement of June 11th, that essentially we are in the process of complying with the socio-2, that where, which says that not later than 30 days after certification we would provide an agreement, and we expect to have it prior to that time.

MR. LAURIE: Thank you.

MR. VALKOSKY: Just two more questions for the panel. Still didn't get an answer to the first question concerning the worker safety concerns that were mentioned during the April hearings?

WITNESS GARRATT: Yes, that --

MR. VALKOSKY: Those were linked, to my recollection, to the fire protection services. Is it your testimony that those concerns have now been met?

WITNESS GARRATT: Well, my recollection, I mean, my recollection was that the issue there was the -- whether there was adequate fire protection equipment, and that by virtue of this term sheet and assuming that it ends up in an executed agreement, that they will be met.

MR. VALKOSKY: Okay, thank you. Second question, is any further mitigation of impacts to the area schools feasible? The testimony indicates that additional fees, state law prohibits the imposition of additional fees upon developers to address school impacts.

And my question to you is, is it your testimony that impacts to schools, especially those in the Bakersfield area which are at or over capacity, have been mitigated to the extent possible?

WITNESS SMITH: I would say yes.

MR. VALKOSKY: Okay, thank you.

Mr. Thompson, any redirect?

MR. THOMPSON: No, thank you.

MR. VALKOSKY: Anything else for any other party for these witnesses?

Thank you, gentlemen.

(Witnesses excused.)

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: Staff's witness is Dale Edwards.  
Whereupon,  
DALE EDWARDS,  
having been first duly sworn, was called as a witness herein, and  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OGATA:

Q Mr. Edwards, what is your job title at the energy  
commission?

A I'm a planner-3 --

Q What --

A -- supervisor of the community and cultural resources  
unit.

Q And what are your job duties?

A I supervise the community and cultural resources unit.

Q And besides that, do you write testimony?

A I did on this case, yes.

Q Okay, you have before you the revised testimony of Dale  
Edwards in socioeconomics, dated June 11th, filed by the staff on  
June 14th?

A Yes.

Q You have it before you. Did you write this testimony?

A Yes, I did.

Q Do you have any changes or corrections to this  
testimony?

A None from that date, no.

Q So you intend this latest version of your socioeconomics  
testimony to supersede all previous versions?

A Yes.

Q Okay, could you please summarize your testimony for us?

A Yes. Staff socioeconomics analysis for the La Paloma  
project covers identification of applicable federal, state, local  
laws, ordinances, regulations and standards, current environmental  
and socioeconomic setting, potential impacts in the affected area  
as a result of the project in the categories of employment,  
housing, schools, utilities, emergency and other facilities or  
services, rather, financial or fiscal as well as environmental  
justice. Also cumulative impacts, facility closure, mitigation,  
conclusions and recommendations and ending with proposed  
conditions of certification.

In addition to the information provided in the AFC,  
other agencies were contacted for the purpose of acquiring  
necessary information for a complete analysis. These other  
agencies included the California Employment Development  
Department, Department of Education, Kern county schools, sheriff,  
assessor's office, auditor and controller's office, fire and  
planning departments and Mercy Westside district hospital in Taft.

For environmental justice, staff found that the most recent population data indicates that 34 percent of the affected area population is identified as minority and 27 percent is the highest low-income percentage of the area's population. Each of these values is well below the 50 percent threshold to find environmental justice as an issue.

The analysis found that there is a potential significant impact on schools in Bakersfield, resulting from new enrollments of children of nonlocal La Paloma construction workers during the construction period. There is also a potential significant cumulative impact on Bakersfield schools due to the enrollment of children of nonlocal construction workers for up to five energy-commission-certified powerplant projects anticipated to be in construction over the next two to three years in Kern County.

However, due to a recent change in California law, SB-50, which limits how schools are financed, these impacts cannot, can only be addressed through the allocation of property tax revenues and the school impact development fee collected by the Kern County department of engineering and services and building inspection. Staff has proposed condition socio-1 to ensure that the statutory school impact development fee is paid to Kern County.

The analysis also found that there is a potential significant cumulative impact on the Kern County fire department at the Taft fire station. This impact results in the need for a new ladder truck with equipment for high-angle and confine-space rescues. This new truck will provide this needed rescue capability to up to four powerplant projects anticipated in the west Kern County area. These projects are La Paloma, Sunrise, Elk Hills and Midway Sunset west.

Staff has proposed condition of certification socio-2 to mitigate this impact. Socio-2 requires the project owner to reach an agreement with the Kern County fire department on funding for purchase of a new 105-foot ladder truck equipped for high-angle and confined-space rescues, nine new positions for personnel to staff three shifts per day for the new truck, and a replacement ladder truck.

Based on information provided at a May 17th, 1999, workshop with representatives of Kern County fire department, La Paloma and Elk Hills, staff believes that the La Paloma's payment to the Kern County fire department will be triggered by a favorable presiding member's proposed decision for the second powerplant project in the west Kern County area. It's important to note that up-front funding for the fire truck, staff and replacement truck intended for -- intended by proposed condition socio-2 is not in addition to the property taxes that the La Paloma project will pay but

serves as an advance payment of those taxes for the proposed -- for the purpose of acquiring the needed fire equipment and personnel at the time they are needed.

It is staff's intent to propose a condition similar to socio-2 in this case for the other powerplant projects in the Taft area.

Staff concludes that the project will provide benefits to the affected area's property and sales taxes, employment and sales of services, manufactured goods and equipment, and with the adoption of staff's two proposed conditions of certification, the La Paloma project will not cause a significant adverse impact on the affected area's housing, schools, police, fire and emergency services, hospitals, utilities or employment.

Therefore, staff recommends approval of the La Paloma project, with adoption of staff's proposed conditions of certification socio-1 and socio-2.

Q That conclude your testimony?

A Yes, it does.

MR. OGATA: Mr. Edwards is available for cross-examination.

MR. VALKOSKY: Mr. Thompson.

MR. THOMPSON: No questions, thank you.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Edwards, same questions as I had for the previous witnesses. Are the worker safety concerns mentioned in previous staff testimony meant by your -- met by your present socioeconomic conditions?

THE WITNESS: Yes, I believe they are. That's condition 2 which relates to the fire truck to provide the emergency rescue capability which is identified as a worker safety issue.

MR. VALKOSKY: Next, is further mitigation of impacts to overcrowded schools, in your opinion, infeasible?

THE WITNESS: According to recent -- or, recent legislation and therefore law that which has been passed into law, public agencies, namely, state agencies, are prohibited from requiring additional fees for schools, other than the statutory development fee which is paid at basically part of a building permit at the time of application for that building permit at the local agency.

MR. VALKOSKY: So then do the conditions of certification as you have proposed them, in your opinion, mitigate school impacts to the extent possible?

THE WITNESS: Yes, they do.

MR. VALKOSKY: Thank you.

MR. LAURIE: Mr. Edwards, let's talk about fire trucks for a minute.

THE WITNESS: Okay.

MR. LAURIE: And we're just going to chat about this. I have a discomfiture with any condition imposed on any project that mandates any applicant to reach agreement with a third party, except to the extent that it is necessary to specifically mitigate a identified impact. Basis for the statement is I want to make sure that any agreement is a good-faith agreement on both sides and that if an applicant has a condition imposed that says you must reach an agreement, well, that makes negotiating difficult.

So in looking at the proposed mitigation measure, I would ask you what are -- and I am going to be very sensitive here, I don't want to interfere with a negotiation between the fire department and the Applicant -- but I'm looking at the question from not only this case but future cases. Are we interested in being specific as to addressing the needs of the local fire agency or are we interested in ensuring that the evidence reflects that impacts have been substantially mitigated?

Would you like me to rephrase the question?

THE WITNESS: Go ahead.

MR. LAURIE: Would a satisfactory condition be something to the extent that Applicant show me the requirements of the local fire district without us telling either the fire department or the Applicant what the terms of the deal are going to be?

THE WITNESS: In the context that I'm doing this analysis and working under, or the -- our agency is working under, in fact, on behalf of the local agency, in this case the fire department, where they identified the need for a fire truck which again is a cumulative impact rather than a specific project impact, there is a difficulty in how do you accomplish that when you have multiple projects that are happening in different points in time.

Ideally, of course, we would have two or maybe more projects that are those cumulative projects being certified at or about the same time where we could write a condition to specify what each of those projects shall do to ensure that a truck is, you know, whatever equipment is purchased for the fire department, working on or acting on their behalf as this agency is.

In the current context we don't have that temporal arrangement, so what we're trying to do is with the first project be as in a sense specific and nonspecific at the same time as possible to not dictate what the agreement shall include but rather to say that there needs to be some compensation paid to the fire department for the purchase of necessary equipment from each of these projects. Previously there was a condition that was drafted different than this current one is, and that previous language has been dropped in favor of this current language

because there's an understanding on my part that negotiations are well underway into, onto reaching this agreement.

The terms of the agreement, as I understand them, are quite different than I would have envisioned some months ago. Basically, as I understand it, that La Paloma is basically taking the position of fronting nearly all the money under certain circumstances or all the money under certain circumstances to be repaid by future projects, and also by the County of Kern, if that in fact happens. There's a variety of ways that payments may be made, or repayments.

I'm not answering your question very well.

MR. LAURIE: That's okay. Are you satisfied from the evidence in the record that the proposal which goes to the purchase of a fire truck is necessary in order to mitigate cumulative impacts?

THE WITNESS: Yes.

MR. LAURIE: Thank you. What happens if the Applicant and fire department are unable to reach agreement? Does the energy commission have continuing jurisdiction and have the question come back for review of that condition?

THE WITNESS: We do have continuing jurisdiction and one possible remedy for that situation is that the -- either the Applicant or even the fire department could come to the commission seeking an amendment to the condition, requesting that there be a change in the requirement.

MR. LAURIE: That's fine.

THE WITNESS: Okay.

MR. LAURIE: Thank you, Mr. Edwards.

MR. VALKOSKY: Mr. Ogata, any redirect?

BY MR. OGATA:

Q Mr. Edwards, you stated that the condition that you had written several months is different than the one that's included in your most recent testimony. Can you explain why that is again?

A Well, the previous condition did have some language about if these other projects are not certified, here's the amount the La Paloma project would have to pay, and that was based on a prorated share, the La Paloma based on megawatts of generation compared to the other expected projects.

Because of the fact that if these other projects are not in fact proposed, well, I guess the condition previously also included for that contingency that if something happened that those other projects, either one or more of them, are not actually certified, that the amount that was specified in that condition would be subject to change in the future. I believe at this point the reason why that condition was dropped in favor of the current language is that there has been a very good-faith effort on the part of the Applicant to pursue an agreement that all parties are

-- or, the parties that are in the agreement are in agreement with.

That may be problematic at some point, and I recognize the commissioner's concern about what happens if this doesn't follow through or if the actual agreement doesn't continue to conclusion.

Q So you're saying the reason why the condition reads the way it does now is because this reflects your understanding of the current agreement that is in place between La Paloma and the fire district; is that right?

A Or moving towards emplacement.

One of the questions that I didn't hear answered which there was discussion about, the, you know, it's moving along well, was something on the order of, well, when would it be actual, an actual agreement be completed. I don't think I heard that, I'm not real sure of that, but --

MR. OGATA: Okay, well, I have nothing further of Mr. Edwards.

MR. VALKOSKY: Okay, well, actually, Mr. Edwards, as I read your condition, it says not later than 30 days after certification the project owner shall reach agreement. Now that's contained in your testimony.

THE WITNESS: Right.

MR. VALKOSKY: What happens if they don't reach agreement within 30 days?

THE WITNESS: Well, because the language that's in socio-2 says, in the what we might call the requirement part of the condition that not later than 30 days after certification they'll, they shall reach agreement, if that is not done by that time frame then they'd basically be in noncompliance and be subject to various actions by the commission, some of those subject to commission-level approval, the highest -- well, not going to go to the highest of those, but amongst those are potential fines for noncompliance.

MR. VALKOSKY: Okay, so your testimony then is that if Applicant does not submit a final agreement within the specified period of time that the dispute resolution procedures of the compliance plan then kick in?

THE WITNESS: There's that, and there's another thing I'm thinking of, that one of the options that is always available to staff and staff counsel can provide some comment on this, too, I'd appreciate, is that because this is a health-and-safety issue, staff is able to suggest or offer up amendment or the need for amendment, and this is an area where this is a health-and-safety issue. And if the agreement isn't happening by this time frame, staff could initiate an amendment on at staff, staff could

initiate an amendment, period, for this -- or, for this condition if it's not satisfied on or about that date.

MR. VALKOSKY: Mr. Ogata, is that your understanding of the legal procedures available to staff?

MR. OGATA: That's a procedure that's available, Mr. Valkosky, but we would probably not initiate that until we've exhausted some other things such as working with the Applicant to see what's going on, possibly filing a complaint with the commission to enforce the condition as it exists, and if all those things appear to be better, we'd probably utilize that, as opposed to just initiating an amendment for some other course of action, unless that course of action has already been determined somehow by -- and have reached agreement among ourselves, among the parties.

But certainly, generally, if it is health-and-safety issue, then staff can initiate an amendment request.

MR. VALKOSKY: Mr. Thompson, is that explanation consistent with your understanding?

MR. THOMPSON: Actually we --

MR. VALKOSKY: Of remedies?

MR. THOMPSON: -- we are the optimists here, I think. We have a good ongoing dialogue with the fire department. We expect to have full resolution shortly and hadn't really considered what would happen if it all fell apart and we're out three or four months from now.

But yes, I think that the outlining of the legal remedies available to the staff are correct.

MR. VALKOSKY: Okay, thank you. Are there any other questions for Mr. Edwards?

Seeing none, thank you, Mr. Edwards.

(Witness excused.)

MR. VALKOSKY: Ms. Poole.

MS. POOLE: Yes, CURE -- no questions -- CURE would like to call Danny Kane as its witness.

And Mr. Kane needs to be sworn.

Whereupon,

DAN KANE,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

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DIRECT EXAMINATION

BY MS. POOLE:

Q Mr. Kane, would you please state your name and job title for the record?

A My name is Danny Kane. I'm the business manager of the International Brotherhood of Electrical Workers, Local 428.



Q Okay, are you the same Danny Kane that sponsored a portion of the prepared testimony today?

A Yes.

Q Do you have any changes to make in that testimony?

A Yes, on page 5, I -- we have down there that we have 33 apprentices. That figure's now grown to 42. And probably before the start of the project will grow further.

Q And when you say we, you mean IBEW Local 428?

A Yes.

Q And would you like to summarize that testimony, please?

A Yes. I'm here today to testify on behalf of the California Unions for Reliable Energy, or CURE. CURE represents workers that will build, operate and maintain the La Paloma powerplant. Your approval of the La Paloma project will bring economic benefits to this area. The unions that belong to CURE have members who live in the surrounding communities. For example, my local has approximately 350 journeymen and 42 apprentices living in and around Bakersfield. The Pipefitters have stated that they have over 600 members living in Kern County.

Many of the other unions that will work on this project also have members who live in this area. These people economically contribute to the local communities by spending their wages and benefits here at home. La Paloma has agreed to pay workers on this project adequate wages and benefits. This is very important to construction workers in particular who often travel from job to job and do not have a single employer to provide things like health care and retirement benefits.

Adequate wages and benefits provide workers with the means to settle in a community and the ability to afford decent health care and retirement. These benefits are spent locally, contributing positively to the local economy, rather than creating a drain on the public health care and welfare system. Thus the wages and benefits paid on each project will not only benefit members of the unions and their families, but will also benefit the local economy.

In addition, each union worker on the La Paloma project will contribute a portion of their hourly wages to support local training and apprenticeship programs. These programs create job opportunities for local residents by teaching a valuable skill at no cost to the taxpayer. They also help maintain a high level of proficiency among union workers by keeping members trained in the latest techniques of the trade.

The same training programs that will be supported by the project have trained people who will work on the project. In the case of Local 428, apprentices undergo five years of classroom and on-the-job training before becoming journeymen. This includes 1200 hours of classroom work and 8000 hours of onsite training.

The Pipefitters have described a similar program. All of the training programs include not only the skills of the craft, but also emphasize safety training. That means that workers on the project have the training and skills necessary to safely and efficiently build and operate the complicated components that make up this large powerplant.

I believe that the La Paloma project will have a positive impact on the local economy and other members of CURE are here with me today, including Nick Kavanaugh from the Pipefitters, and we would be happy to answer any questions that you might have.

Thank you for this opportunity to testify.

MR. VALKOSKY: Thank you, sir.

MS. POOLE: Mr. Kane is available for cross.

MR. VALKOSKY: Mr. Thompson.

MR. THOMPSON: Just a couple questions, Mr. Kane.

CROSS-EXAMINATION

BY MR. THOMPSON:

Q Local 428, is that Bakersfield, Bakersfield area?

A It's Kern County.

Q Kern County. And in your union is there an adequate union work force available to construct and operate this project?

A Yes.

MR. THOMPSON: Thank you very much. Nothing else.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Mr. Kane, when you indicate adequate wages and benefits, is it correct to assume that that's -- that could also be referred to as union scale?

THE WITNESS: Yes.

MR. VALKOSKY: Is there anything further for Mr. Kane from anyone?

Thank you, sir. Appreciated your testimony.

(Witness excused.)

MS. POOLE: I -- Nick Kavanaugh is available here if anybody has any cross-examination questions for him.

MR. VALKOSKY: Okay.

MS. POOLE: But I hadn't planned on putting him on the stand.

MR. VALKOSKY: Okay, are there any questions for Mr. Kavanaugh?

MR. THOMPSON: We have none, but appreciate his presence.

MR. VALKOSKY: Thank you. Staff? From anyone else?

Okay, thank you, Ms. Poole.

At this time, are there any exhibits on socioeconomics that anyone would like to move into the record?

MR. THOMPSON: Applicant would like to move Exhibit 40 and Exhibit 49 into the record, please.

MR. VALKOSKY: Is there any objection?

MR. OGATA: No objection.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No objection.

MR. VALKOSKY: Mr. Ogata, do you have any exhibits?

MR. OGATA: No, not at this time. We'll just introduce the whole package at the conclusion of testimony if that's okay.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: Yes, CURE would like to move Exhibit 36 into the record.

MR. VALKOSKY: Any objection?

MR. THOMPSON: None.

MR. OGATA: No objection.

MR. VALKOSKY: Okay, Exhibits 36, 40 and 49 are admitted into evidence.

(The documents referred to,  
having been previously marked  
for identification as  
Exhibits 36, 40 and 49,  
were received in evidence.)

MR. VALKOSKY: I'd like to thank the parties. I understand that there are representatives of the fire department here. Like to give you an opportunity to make any comments on the matters we've been discussing today, if you'd like.

MR. CHAFFIN: (Indiscernible.)

MR. VALKOSKY: Okay, I would indicate for the record that the gentleman from the fire department indicated his basic agreement with the discussion we've had today.

Sir, could I have your name for the record?

MR. CHAFFIN: Mark Chaffin, C-h-a-f-f-i-n.

MR. VALKOSKY: Okay, thank you. Next I've got three individuals who would like to give comment on the general project, and I think socioeconomics is a good place to do it.

First, Mr. John Barnes.

MR. BARNES: Good afternoon. Just a few brief comments.

I'd like to say that the US Generating team has kept the McKittrick school board well informed concerning this project. They've educated us about the project and they've dispelled any concerns that the board had concerning safety issues with this project.

La Paloma will help the local economy, provide job opportunities and attract new businesses to Kern County. This district's share of the property tax revenue from La Paloma will give us a financial stability that we have never experienced before. This tax revenue will enable us to better educate our

students and tackle some of our plant maintenance projects, such as air conditioners.

I would like to say that La Paloma has substantial support from the community. I have personally talked to many parents and community members. My staff have done so. My board has. I have not personally one negative comment concerning this project.

So in conclusion, La Paloma is a state-of-the-art project, and we in McKittrick are proud to be associated with it. Thank you very much.

MR. LAURIE: And, Mr. Barnes, for the record, will you state your position and title, please?

MR. BARNES: I'm superintendent of McKittrick school.

MR. LAURIE: Thank you, sir.

MR. BARNES: You're welcome.

MR. VALKOSKY: Thank you, Mr. Barnes.

Next, Mr. Carl Twisselman.

Thank you.

MR. TWISSELMAN: Before I start, I'd like to thank the commission for holding this hearing here in McKittrick. Usually a hearing on a local project is in Los Angeles or Sacramento. It can be kind of hard to attend.

Thank you for letting me speak before lunch, although I just remembered everybody tells me don't speak before lunch, nobody will listen to what you say, they think we're going to lunch.

So I'll read it to save time. My name is Carl F. Twisselman II. I want to urge the California Energy Commission to approve all permits and other documents necessary to allow the construction and operation of a proposed La Paloma Generating Project. I've been a resident of Kern County and in McKittrick elementary school district for 58 years, and I believe this project is in the best interests of the residents of both the county and McKittrick.

There're very few projects or businesses that come into our county that are positive for property tax cash flow. This is one of those projects. The property tax paid will far exceed local and county costs for the permanent employees. The project will be a great financial boon for the county, the school and other special districts in this area if we can keep the state from getting their hands on it.

And it won't bring any of the downside risks that often come with new types of businesses or projects. I've attended several informational meetings and had private conversations with representatives of US Generating and I found them very open and willing to answer all questions. Their people are extremely knowledgeable about the electric generating business, they bent

over backward to come up with site plans and mitigation measures that are more, they more than meet any sensible expectations in all of the many areas that they must address.

They've spent money mitigating for things that aren't even really at risk here. The McKittrick site is an ideal location for this type of project, with the natural resources, infrastructure capability, remoteness, availability of the land, and other advantageous physical characteristics that fit this kind of facility.

The only concerns that I had, the safety and noise in relation to McKittrick school and the town have been addressed, and those areas of concern and all other areas of local impact have been considered and provided for in a manner that rises above anything that I would have requested.

I'd especially request to you on the commission that the request by US Generating to donate a sum of money to McKittrick elementary school in lieu of doing a landscape plan be approved by the commission. In this desert type of area, within three years after the construction's finished, Mother Nature will come back and reclaim that land; unless it's covered with concrete, it'll look just like it did before. The money that would have gone to landscaping can be very well used here at the school district and in my opinion would be a waste down there at the site.

This project is one with little if any downside or negatives, and tremendous positives for the county and the school. We in California are going to need increasing amounts of electricity, and this project will provide that electricity in as clean, economical and safe a manner as is going to be politically possible in this state.

Again, I urge the permitting and operation of this facility in as speedy a manner as possible. Mr. Laurie, I'd like to thank you for your concern for our children's safety; appreciate that.

Thank you.

MR. VALKOSKY: Thank you, sir.

Mr. Ogata and/or Mr. Thompson, perhaps you can help me out here. Which specific condition was Mr. Twisselman referring to? I assume it's a visual condition.

MR. THOMPSON: I just turned to the page. Jeff, do you have it?

My understanding is that it's in both visual and land use. Visual-4 on page 201 of the FSA.

MR. VALKOSKY: Okay, now the reference is to a request by the Applicant to donate a sum of money. Could you expand on that a little bit?

MR. THOMPSON: The -- this has actually come up before in a previous hearing, and the proposal as I understood it at the

time was that we would take the funds that would have been spent to do landscaping at the project site and instead do a landscape plan and landscaping around the school here. And we said at the time that that was acceptable to us, and we'd actually prefer to do that, but needed an indication from the county that that's what they would prefer as well, and I think we just had that.

So we would suggest that visual-4 and the appropriate land use condition which mirrors this provision be changed to allow the landscaping that was going to be put at the project site to be put here at the school.

MR. VALKOSKY: Mr. Ogata, any comments on that?

MR. OGATA: Staff doesn't have a problem with that. That has been raised before. With respect to land use, that was on the list that I think you previously cited when Ms. Stennick was testifying. It's one of the elements in the plan that's supposed to be submitted to the county.

MR. VALKOSKY: On the development --

MR. OGATA: And as we said, that has been raised before. Staff does not have an objection to that.

MR. VALKOSKY: Okay.

MR. ROHY: I'd like to ask the Applicant a question on that landscaping is not accomplished at the site, would there be weed abatement in the areas from a fire hazard point of view?

MR. THOMPSON: Yes, there would be.

MR. ROHY: So the lack of landscaping would not stop you from doing a weed abatement program?

MR. THOMPSON: It would not.

MR. ROHY: Thank you.

MR. LAURIE: Mr. Valkosky, I'm interested in whether Superintendent Barnes has any comment on the proposal.

MR. VALKOSKY: Could you, Mr. Barnes, could you come up here, please.

MR. BARNES: No, on behalf of the school, we would be very pleased to accept that donation.

MR. VALKOSKY: Okay. Mr. Ogata and Mr. Thompson, the committee would be deeply appreciative if you could provide us some modified language.

MR. THOMPSON: We will do that.

MR. VALKOSKY: In as short an order as possible.

MR. THOMPSON: We understand.

MR. VALKOSKY: Thank you. Are there any other comments on the proposal, specifically the landscaping change that we've just discussed?

Okay, thank you. Last commenter I have is Mr. Ameri or Ameri. Please come up here, please, sir, introduce yourself for the record.

MR. AMERI: Yes, Commissioner, my name is Hormoz Ameri, and I'm the CEO and founder of Naftex. I felt compelled to come up here and make a comment for the record, as being the landowner of the proposed site of which La Paloma has taken out an option, and also as the landowner of the adjacent parcels of which they intend to acquire the rights-of-way to buy fuel and water and also to set their poles to take the power out of the property.

So just want to be on the record as the landowner of those parcels of land and we'd like to also be made aware of the activities regarding the water injection well. We did not receive a notice from the Environmental Protection Agency on the water injection well.

The only other comment I wanted to make is that we are in support of the project; however, I think that the proposed timetable may be a little bit optimistic.

MR. VALKOSKY: Okay, sir, I'd like to indicate that as far as the water injection wells go, we will be discussing that topic after lunch in the soil and water area, and that's pertinent then if you'd certainly like to bring up anything then, you're more than welcome to.

Two, for my own clarification, let's see, you said you were the owner of the project site itself?

MR. AMERI: Of the land of which they have an option to basically buy the land, and we intend to comply with the legal language in the option that they have.

MR. VALKOSKY: Okay, so that is you are waiting for them to exercise the option; is that it, or --

MR. AMERI: Yes, they have actually made that indication that they would like to extend their time frame for the option, and we were made aware of that a few weeks ago, and that's just fine.

MR. VALKOSKY: Okay, so you see no difficulties with that?

MR. AMERI: No, sir.

MR. VALKOSKY: Then also you indicated you're the owner of various parcels that will be used as the right-of-way for the transmission line and the water supply line; is that --

MR. AMERI: Yes, and also the fuel line.

MR. VALKOSKY: And the fuel line?

MR. AMERI: And the fuel line.

MR. VALKOSKY: Okay, and we had testimony earlier today that Applicant had completed, I believe the figure was, about 95 percent of the negotiation for the rights-of-way for those linear facilities, so have they completed negotiations with you or not?

MR. AMERI: No, sir, they have not.

MR. VALKOSKY: Okay, and so that would involve the transmission line, the water line and the fuel line? Or --

MR. AMERI: Yes, sir.

MR. VALKOSKY: Okay, it would involve all of those. Have they given any indication to you of when they intend to complete negotiation for these rights-of-way?

MR. AMERI: Well, we made them a proposal a few months ago which was rejected by them, and we received a proposal for them, from them, as of last week that was rejected by me. And that's where we are.

MR. VALKOSKY: Okay. Mt. Thompson, I believe earlier Mr. Garratt testified that a timetable for completing the rights-of-way negotiation was as soon as possible, I mean, could you give me a little more definition to that?

MR. THOMPSON: I believe as soon as possible's probably my words.

MR. VALKOSKY: Well, let's relate it to certification, which is really all the commission is concerned about. So would that be before the commission is asked to certify the project or not?

MR. GARRATT: Well, we would hope to have all negotiations complete before certification, but there's no way to guarantee that. Obviously we cannot build before we have the rights-of-way.

MR. VALKOSKY: Right, so that is in the real world the ultimate controlling factor is that you can't commence construction before these negotiations are complete.

Thank you.

Okay, with that, we close out the topic of socioeconomics unless there is anyone here present who would like to offer additional comment.

If I could just have one second, please.

(Panel confer.)

MR. VALKOSKY: Okay, with that we'll take a brief luncheon recess until 1:45. At that time we'll resume with the topic of biological resources.

Thank you all.

(Whereupon, at 12:52 p.m., the noon recess was taken.)



A F T E R N O O N     S E S S I O N

2:07 p.m.

MR. LAURIE: It's 2:00 o'clock. The ties have come off. At 3:00 o'clock we will call again for determination of what next is appropriate, which means we'd better get out of here by 4:00 because we're just -- enough of that.

We're ready to proceed, Mr. Valkosky.

MR. VALKOSKY: Thank you, Commissioner.

Next topic on the agenda is biological resources. Your witnesses, Mr. Thompson.

MR. THOMPSON: Thank you, Mr. Valkosky. As a preliminary matter, I would note that while I still have my tie on as per directed from the committee, I've been assured from my engineering staff that heat rises. So I probably will not be the most miserable one in the room if it gets hot.

MR. LAURIE: I've also been advised that attorneys add to the temperature of the surroundings, so --

MR. THOMPSON: Naturally closer to the ground, I think.

We have a panel of three, and I think that the best way to proceed is that I will ask Applicant's witness, Ms. Guldman, for a recap and put the -- and identification of the exhibits that she will sponsor, and then I think that staff will do the same with the other two witnesses and then tender them for cross-examination at the same time, if that's acceptable to the committee.

MR. VALKOSKY: Okay, so that the panel will consist of both Applicant's witnesses and staff's witnesses; is that correct? At the -- testifying at the same time, Mr. Ogata?

MR. OGATA: Yes.

MR. VALKOSKY: That'll be --

MR. OGATA: And we are also sponsoring Jesse Wild, who's from the US Fish & Wildlife Service. We're happy to have her here.

MR. VALKOSKY: Okay, thank you. Could have the witnesses sworn, please.

MR. THOMPSON: Okay, Ms. Guldman, rise to be sworn. Whereupon,

SANDRA GULDMAN,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q     Would you please state your name for the record?

A     My name is Sandra Guldman.

Q And, Ms. Guldman, are you the same Sandra Guldman whose prepared direct testimony appears in Exhibit 34 and rebuttal in Exhibit 39 to this proceeding?

A Yes, I am.

Q And am I correct that you are here today to sponsor Exhibit 1, which is the Applicant's AFC, section 5.6 on biological resources; appendix J, which is the biology technical report; Exhibit 2, which are Applicant's responses to staff data requests nos. 16, 17 and 18; Exhibit 5, the biological assessment from October 26th, '98; a portion of the supplement to the AFC identified in Exhibit 12; Exhibit 17, which is the BRMIP (sic) draft; Exhibit 23, which is correspondence to staff regarding the ESA and CESA; a portion of Exhibit 28, the second AFC supplement, specifically section 3.4 on biology; and Exhibit 32, which is the winter raptor survey of March 31, '99; is that correct?

A Yes, that is.

Q Do you have any corrections, additions or deletions to make to that material?

A No.

Q Would you please briefly summarize your testimony in this proceeding?

A A team of biologists working under my supervision conducted comprehensive surveys of the project area in 1998. We added to that information information that the same survey team had gathered in '94 in the project area; prepared an analysis of the resources in the project area; did an impact assessment and developed a mitigation package which involved measures to avoid and reduce impacts to the habitats and sensitive species and compensation for unavoidable impacts.

We also developed some monitoring and reporting measures so that the results of the mitigation package can be documented.

That pretty much sums up the work.

MR. THOMPSON: Thank you.

If it please the committee, I would like after the rest of the testimony is in to ask Ms. Guldman if she agrees with staff's material as amended by later exhibits. I think that's a better question to ask at the tail end of the joint presentation. If that is acceptable, Ms. Guldman is tendered from cross-examination.

MR. VALKOSKY: That's acceptable, Mr. Thompson.

Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Ms. Guldman, are you in a position to answer whether the Applicant will use the tie line, transmission tie line alternative 1 or 1-B?

THE WITNESS: Well, I can state that we are negotiating with Fish & Game to have a property exchange. Fish & Game is very receptive to that. Fish & Game, the Fish & Wildlife Service and the other biologists involved in this agree that that would, using route 1 would be the better alternative.

If that property trade cannot be arranged, then we will construct 1-B, which would avoid the need to place a tower on an ecological reserve, because that can't be done. But I think the odds of being able to use route 1 are quite good.

MR. VALKOSKY: Do you know when these negotiations will be complete?

THE WITNESS: As far as I know, the ball is in Fish & Game's court. They have inspected the property that's been offered in exchange for their property, and to my knowledge, we have not received their comments back on that.

MR. VALKOSKY: Okay, when will the funds for the habitat compensation, when will the final amount be determined and paid?

THE WITNESS: Well, the land will deed to the center for natural lands management and we know how much per acre their fees are. It depends on whether Fish & Game goes with the suggested property trade, because the piece of property they've been offered will be part of the compensation package, if they don't take it, if they do take it, why, we --

MR. VALKOSKY: I see.

THE WITNESS: -- really will have to wait and see the exact parcels that are offered up for compensation.

MR. VALKOSKY: Okay, so basically that it's --

THE WITNESS: It depends on the Fish & Game.

MR. VALKOSKY: Yes, they're interdependent.

THE WITNESS: Negotiation. But the generating --

MR. VALKOSKY: Packages --

THE WITNESS: -- company has committed to providing at least 255 acres to the center for natural lands management which gives an excess of several acres, and the funds for that, they're committed to an excess of what would be required, in any case.

MR. VALKOSKY: Okay, and then the -- so the, again, the 255 acres is a minimum, did you say, of --

THE WITNESS: Yes.

MR. VALKOSKY: -- compensatory habitat? Okay, thank you.

THE WITNESS: Oh, apropos compensation, we also need to provide a small amount of land east of the California aqueduct to compensate for impacts to the Tipton kangaroo habitat. The Tipton kangaroo rat only occurs east of the California aqueduct, and we are still trying to find the specific parcel to buy for that. And there are some 10-acre parcels, some 40-acre parcels. So if, you

know, if a larger one has to be bought to get that land, why, there'll be even more land.

MR. VALKOSKY: Oh, and this compensation would be provided before the start of construction?

THE WITNESS: Oh, yes. Yes. And the fees for its enhancement and endowment.

MR. VALKOSKY: Okay, thank you.

Redirect, Mr. Thompson?

MR. THOMPSON: We have none.

MR. VALKOSKY: Any other questions for Ms. Guldman?

Mr. Ogata.

MR. OGATA: Thank you. Staff's witness is Rick York. Whereupon,

RICK YORK,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OGATA:

Q Mr. York, what is your job title at the energy commission?

A I'm a planner-2 at the energy commission.

Q What are your duties?

A I work in the biological resources unit of the energy commission.

Q Do you have before you the revised testimony of Rick York regarding biological resources, dated June 11th, that was filed by staff on June 14th?

A Yes, I do.

Q Did you write this testimony?

A Yes, I did.

Q You have any changes or corrections you'd like to make at this time?

A None at this time.

Q Okay, could you please summarize your testimony for us?

A Staff's focus for the La Paloma project was to work out mitigation for the impacts to several state and federally listed species and their habitats. A little bit about the area, there are many sensitive species that are known from this region. Five plant species are on the sensitive list; two of them are federally listed. There are 26 wildlife species that are on the sensitive species list; nine of these are either federally or state listed.

Some noteworthy species for this area, San Joaquin kit fox, which is state threatened and federally listed endangered; bluntnose leopard lizard, state endangered, federally endangered and a fully protected species by the State of California; giant kangaroo rat, which is state and federally listed endangered; the

Kern mallow, which is a federally endangered listed plant; and California condor, which is state and federally listed endangered.

As Ms. Guldman mentioned, there are some protected areas that this project is going to be located nearby. One of them is the ecological reserve managed by the California Department of Fish & Game. It's approximately 60 acres. The Low Kern preserve, which is owned and managed by the center for natural lands management. It's 3000 acres. And then there's a planning area that's out here, it's owned by quite an assortment of folks, and dealt with by private and agency types. This is the Low Kern natural area, it's 44,000 acres. And both the T-line and the water line cross the Low Kern natural area.

Staff worked very closely with the Department of fish & Game, the Fish & Wildlife Service and the Applicant to make certain that when the Applicant builds and operates the La Paloma project, it'll be in compliance with all state and federally -- federal species protection laws.

A little bit about habitat compensation, it's already been mentioned that 255 acres or more will be permanently protected and I believe that all of that compensation habitat will be part of the Low Kern preserve which is managed by the center for natural lands management.

I believe the Applicant and the center have developed an MOU already to solidify their working relationship. We're very pleased that that has happened.

And I'd like to also repeat part of this compensation also involves the establishment of a permanent endowment for the long-term care of the parcels.

As far as the two documents that we have been looking forward to receiving or seeing, one of them is the US Fish & Wildlife Service biological opinion. We received a copy of that on June 24th. And I believe the Applicant has not had a chance to look that over; however, I'm quite confident that once they see that document, digest it, that I feel that they will be quite willing and able to abide by the terms and conditions found in the federal biological opinion.

As far as Fish & Game's incidental take permit, this is the other document that's -- we've all been looking for, this document apparently will be provided within two weeks of the decision for the La Paloma project, but we still have to wait to see the final signed version of that. However, staff has seen a draft copy of that and I'm quite confident that the Applicant will once again be able and willing to abide by the terms and conditions found in that Fish & Game document.

What we have received, since Fish & Game could not be here today, Fish & Game offered to provide a letter, and I believe copies have been circulated, a letter stating that CDFG feels that

if the proposed mitigation is implemented, the project will be fully compliant with the requirements of the Fish & Game code.

Ms. Guldman also mentioned there was a mitigation and monitoring plan that have been worked on. This is an important, living document that follows the project throughout its entire life. I've just received a new version of it today. This mitigation and monitoring plan deals with their avoidance measures that they're going to be implementing during construction and operation, worker environmental awareness screening, habitat compensation, reporting requirements, various measures that'll be implemented for habitat restoration, these sorts of things.

This document will need to be finalized by working together with not only the Applicant, us and any other agency such as Fish & Game or the Fish & Wildlife Service. It will be finalized prior to the beginning of any project-related habitat disturbance. And we intend to get started working on that quite soon.

Staff intends for all mitigation measures contained in this mitigation and monitoring plan to be in compliance with all state and federal endangered species regulations.

The Applicant agrees to staff's recommended biological resources conditions of certification and has submitted a draft mitigation and monitoring plan that contains methods for implementing a variety of mitigation measures. Staff believes that these mitigation measures are consistent with the requirements of the Fish & Wildlife Service and Fish & Game.

So in conclusion, staff believes that the Applicant can and will build and operate the La Paloma project and be in compliance with all state and federal endangered species and habitat protection regulations.

Q And your conclusion also is that with the adoption of the conditions of certification and the mitigation measures proposed that this project will not create a significant adverse environmental impact; is that correct?

A That is correct.

Q Let me now direct your attention to the letter from Fish & Game.

MR. OGATA: For the information of the committee, that's been marked as Exhibit 58. And that letter is addressed to Mr. Marc Pryor, dated June 25th, and it's signed by W. E. Loudermilk, acting general manager of the San Joaquin valley and southern Sierra region.

(The document referred to was marked for identification as Exhibit 58.)

BY MR. OGATA:

Q That correct?

A That is correct.

Q Okay, you get a chance to see this letter?

A Yes, I have reviewed this letter.

Q Could you please summarize the main points of this letter for us?

A The first paragraph of the document refers to the information that Fish & Game had reviewed for its analysis and will be using for its finalizing its analysis for the incidental take permit. The final sentence in the document refers to their belief that the Applicant can abide by the terms and conditions put forth by Fish & Game.

It talks about the timing of when they're be providing theirs, the incidental take permit. They essentially indicate that what the Applicant and staff has come up with as far as mitigation measures, they are comfortable with them.

It addresses the bluntnosed leopard lizard, concern being a fully protected species and that Fish & Game will not be granting any take for this fully protected species. It also addresses the issue of transmission line 1 versus 1-B, and that that is moving forward and they are aware of that.

And then the document concludes with the statement that I mentioned earlier, that they feel that if the mitigation is implemented as they anticipate it will be, that the project will be in compliance with the Fish & Game code regulations.

Q Okay, have you been in contact with Department of Fish & Game regarding getting this letter for today's hearing?

A I have been dealing with Fish & Game for a while, trying to ascertain what their strategy was going to be for these hearings.

Q So the receipt of this letter from Fish & Game actually is not a surprise to you; is that right? Fact, this is a letter that we would rely upon, normal course of our business, terms of our mode of communication with Fish & Game?

A Yes.

MR. OGATA: Okay, thank you. Have no further questions of Mr. York.

MR. VALKOSKY: Mr. Thompson.

MR. THOMPSON: We don't have any questions, Mr. York, but we are appreciative of your efforts over the past couple months, trying to solve these difficulties. Thank you.

WITNESS YORK: It was a team effort.

MR. VALKOSKY: Ms. Poole, any questions?

MS. POOLE: No.

MR. VALKOSKY: On behalf of the committee, too, Mr. York, I recognize the difficulties you've had and like to extend the committee's thanks, too.

Now turning your attention to Exhibit 54, which contains your most recently revised testimony, on page 9, you indicate that the Applicant, at least to my reading, would intend to use transmission line route 1-B.

WITNESS YORK: Wait a minute. Can you repeat your question, please?

MR. VALKOSKY: Yes. On page 9 of your testimony, first paragraph, last sentence, you indicate that Applicant intends to use transmission line route 1-B, in other words, the one that runs around the protected area. Is that still a correct statement on that?

WITNESS YORK: I think what Ms. Guldman indicated was more of a correct statement, more current statement. When I wrote this, I was not certain that the negotiations were actually underway to do the land swap, and that's why my testimony was written this way. At that time it was felt that they were going to put in the additional towers and route around the ecological reserve.

MR. VALKOSKY: Okay, so now your understanding is that they will go with their --

WITNESS YORK: Yes.

MR. VALKOSKY: -- alternative 1?

WITNESS YORK: And I am happy to hear that that's what they intend to do because it actually results in less permanent impacts to the habitat out there.

MR. VALKOSKY: Okay, fine. Further down on that page you indicate that Applicant will be using a higher-than-normal compensation ratio for CNLM property. Are these the same ratios that are reflected on your table on page 14 of your testimony?

WITNESS YORK: Yes, they are.

MR. VALKOSKY: Okay, thank you. On page 22 of your testimony, you reference the implementation of the provisions of the streambed alteration agreement. Is this the same agreement that we've identified as Exhibit 10?

Exhibit 10, for your information, is the section 1603 agreement from Fish & Game.

WITNESS YORK: Oh, yes. That is.

MR. VALKOSKY: Okay.

WITNESS YORK: I didn't recognize the section number. Yes.

MR. VALKOSKY: Okay, so we're not talking about two different --

WITNESS YORK: No.

MR. VALKOSKY: -- agreements, then? Fine.

On page 23, condition bio-9, actually, sorry, strike that, page 24, condition bio-9, item 5, you refer to a September



1995 report on burrowing owl mitigation. As I read the condition, what you intend for Applicant to do is to comply with those avoidance measures; is that correct?

WITNESS YORK: Yes, that's correct.

MR. VALKOSKY: Okay, the problem that the committee has is we don't have a copy of that report in the record, anything to refer to it as.

WITNESS YORK: We've made you copies.

MR. VALKOSKY: As if you read my mind. Thank you.

WITNESS YORK: I apologize for not getting this earlier to you.

Can I add something here about these mitigation measures?

MR. VALKOSKY: Which, the --

WITNESS YORK: The burrowing owl one.

MR. VALKOSKY: Of course.

WITNESS YORK: A point of clarification here. I want the Applicant to agree to follow the avoidance measures that are identified in here. This document also addresses habitat compensation for a variety of situations for nesting owls and that sort of situation.

The Applicant's already compensating to the fullest extent necessary and there will be no need for additional compensation, habitat compensation, for which is provided in here. So --

MR. VALKOSKY: And which pages are those avoidance measures contained on?

WITNESS YORK: I believe they start on page 5 and go to page 7.

MR. VALKOSKY: Ms. Guldman, are you aware of those, the measures that Mr. York --

WITNESS GULDMAN: Yes.

MR. VALKOSKY: -- identified?

WITNESS GULDMAN: Rick mentioned that there is a revised copy of the BRMIMP. It includes those measures, and it has under cover of the biological opinion actually been docketed. The biological opinion attaches the BRMIMP and the BRMIMP has these measures in it as take avoidance measures for the burrowing owl.

MR. VALKOSKY: Okay, so that's already included?

WITNESS GULDMAN: Yes.

MR. VALKOSKY: I appreciate that clarification. But just to be sure, I'm going to identify this as Exhibit 59, for the sake of being comprehensive. That's the staff report on burrowing owl mitigation. But thank you very much for the clarifications on there.

(The document referred to was marked for identification as

Exhibit 59.)

MR. VALKOSKY: Mr. York, do any of the conditions that you have proposed, and I think most specifically bio-6, which refers to the Fish & Game incidental take permit, and bio-7, which refers to the Fish & Wildlife biological opinion, require any alteration in light of the documents which we've just received today?

WITNESS YORK: I believe bio-6 may need to be, have, may need to have the verification changed. The time period specified here in the verification, I think we need to take into account what the most recent Fish & Game letter indicates about the timing of their permit, and take this condition into account and see if we can adjust the time frame somewhat.

MR. VALKOSKY: Okay, and how about the other one --

WITNESS YORK: Believe bio-7 does not need to be changed.

MR. VALKOSKY: 7 does not, okay, so we do need a change in bio-6. Mr. Thompson, are you amenable to such changes?

MR. THOMPSON: I am. Do we have a -- is there a suggestion of how to change that to make it fit with the Fish & Game schedule?

MR. VALKOSKY: Or if you can't do that right now, you are going to submit us some proposed changes on visual and land as quickly as possible; this could also be one of those items, if that's better.

WITNESS YORK: It'd be my preference to do it off-line and kind of --

MR. VALKOSKY: That's fine.

WITNESS YORK: -- look at it from all the different sides.

MR. VALKOSKY: We'll await the revised versions.

So, Mr. York, then is it your opinion that with the other agencies' reports that there are -- that the La Paloma project will be in compliance with all applicable biological resources laws?

WITNESS YORK: Yes, I believe it will be.

MR. VALKOSKY: Okay, last question, is it your understanding that the BRMIMP will contain all the items specified on pages 13 and 14 of your testimony? Will contain at least all of those items?

WITNESS YORK: It'll probably contain all of them and maybe even -- but, yes, I believe it will contain all those things.

MR. VALKOSKY: Thank you. Any other questions for the witnesses on biological resources?

Hearing none, thank you all very much, or Mr. York and Ms. Guldman.

I realize you have one more.

MR. OGATA: Yes, at this time we'd like to introduce Jesse Wild who's with the US Fish & Wildlife Service. And she's here to talk about the formal section 7 consultation for the La Paloma Generating Project.

And she should be sworn.

Whereupon,

JESSE WILD,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OGATA:

Q Ms. Wild, could you please tell us first what is your job classification with Fish & Wildlife Service?

A I'm a fish and wildlife biologist for the San Joaquin valley branch of the endangered species division in the US Fish & Wildlife Service.

Q And you have before you a memorandum to the field office manager, US Bureau of Land Management, Bakersfield field office, from the field supervisor, Sacramento Fish & Wildlife office, Sacramento, regarding the formal section 7 consultation on the La Paloma Generating Project, Kern County, California, that's dated June 24th, 1999?

A Yes.

Q Did you prepare this document?

A Yes, I did.

Q Can you tell us briefly what material you reviewed in order to write this document?

A I used information from La Paloma Generating Company's biological assessment and application for certification and their monitoring, their draft monitoring plan. Used studies, reports, status surveys that are done by various agencies. Research reports from universities. Observational data, personal communications with local biologists. Recovery plans. Etc.

Q Were there any particular issues that you were concerned about when you were reviewing this material?

A Issues that we were concerned about have been adequately addressed in the biological opinion and in the monitoring plan.

Q Okay, as part of your document, did you -- are -- is there required mitigation to address any potential significant impacts?

A Can you repeat that?

Q In your document, are there any mitigation measures that you are requiring to address any potential significant impacts to any of the species?

A We're requiring that the -- that BLM has the Applicant follow their monitoring plan that was submitted to us and that we approve final versions of that plan. We also have one extra requirement and that is if there is any take of condor they would have to retrofit their towers with anti-perching devices and bird flight diverters.

Q You've looked at the final staff assessment written by the -- by Mr. York; is it your opinion that the staff's conditions conform with your biological opinion?

A Yes, they do.

Q And is it your opinion that La Paloma Generating Project is, will be in compliance with all federal laws, ordinances, regulations and standards if they follow the mitigation requirements that you put into your document?

A Yes.

MR. OGATA: I have no further questions of Ms. Wild.

MR. VALKOSKY: Thank you, Mr. Ogata.

Mr. Thompson.

MR. THOMPSON: We have none. Thank you.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Any questions for the witness from anyone here present?

Ms. Wild, on behalf of the committee, I'd like to thank you for your cooperation on this project, and greatly appreciate it.

Thank you. Any public comment on the general area of biological resources?

Thank the witnesses.

MR. THOMPSON: I have --

MR. VALKOSKY: Oh, I'm sorry.

MR. THOMPSON: Thank you.

DIRECT EXAMINATION (RESUMED)

BY MR. THOMPSON:

Q Ms. Guldman, I take it you have read and reviewed the staff, Exhibit 54, which contains staff testimony as well as previous staff testimony contained in the staff analysis, and with that and the US Fish & Wildlife Service-recommended condition of certification and the forthcoming change to staff's bio-6, do you recommend to La Paloma Generating Company that they accept the conditions of certification and verification thereto?

A I do indeed.

MR. THOMPSON: Thank you very much. That's all I have.

MR. VALKOSKY: Mr. Thompson, do you have any exhibits to move in at this time?

MR. THOMPSON: I do. Thank you very much.

Applicant would like to move Exhibits 5, 17, 23 and 32 into the record.

MR. VALKOSKY: Any objection?

MR. OGATA: No objection.

MR. VALKOSKY: Those four exhibits are admitted.

(The documents referred to,  
having been previously marked  
for identification as  
Exhibits 5, 17, 23, and 32,  
were received in evidence.)

MR. VALKOSKY: Mr. Ogata, do you have any?

MR. OGATA: Yes, Mr. Valkosky, we'd like to move Exhibit 57, Exhibit 58, Exhibit 59 into the record at this time.

MR. VALKOSKY: Any objections?

57, 58 and 59 are admitted.

(The documents referred to,  
having been previously marked  
for identification as  
Exhibits 57, 58 and 59,  
were received in evidence.)

MR. VALKOSKY: Thank you.

(Witnesses Guldman, York and Wild excused.)

MR. VALKOSKY: Next topic is soil and water resources.

MR. THOMPSON: Applicant would like to call Mr. Robert Ray, who's not been sworn.

Whereupon,

ROBERT RAY,

having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Would you please state your name for the record?

A Robert Ray.

Q And are you the Robert Ray that submitted prepared testimony in this proceeding in Exhibit 34?

A I am.

Q And you are here today, are you not, to sponsor Exhibit 1, Applicant's AFC, section 5.4, agriculture and soils; Exhibit 12, which is a supplement to the AFC, section 3.2; and Exhibit 28, a further supplement to the AFC, again section 3.2, agriculture and soils?

A Yes, I am.

Q You have any changes corrections or additions to make to that material?

A I do not.

Q Would you briefly summarize your testimony on agriculture and soils?

A Yes. The focus of the agriculture and soils assessment in the AFC was to assess whether construction or operation of the proposed project would result in accelerated soil erosion and whether the proposed project would adversely impact or displace agricultural land uses, including prime farmland.

The primary data sources that were used to perform the ag and soils assessment are the 1988 soil survey of Kern County, northwestern part, and the 1994 general soil map of southwest Kern County, both of which were prepared by the Soil Conservation Service, which is now known as the Natural Resources Conservation Service.

Additionally, we consulted the important farmland maps that are prepared by the California Department of Conservation, dated 1996, with respect to prime farmland.

I'd now like to summarize the baseline conditions in the project area. The native soils in the project area are sandy loams, clay loams and clay soils formed primarily in alluvium which is derived predominantly from sedimentary and granitic rock. The proposed powerplant site is located on the Kimberlina sandy loam soils which are deep, well-drained and which exhibit low to moderate erosion susceptibility for wind and water.

Erosion susceptibility of the soils in the overall project area is primarily low for wind-induced erosion and moderate to high for water-induced erosion. The proposed powerplant site and the ancillary pipeline routes are located west of the aqueduct, which are located west of the aqueduct and they do not involve agricultural lands. The more eastern portions of the proposed and alternative transmission line routes traverse agricultural areas such irrigated row crops, some of which qualify as prime farmland.

It is expected that about 0.04 acre of prime farmland would be taken out of production by the proposed project over the life of the project at the base of the transmission towers.

I'd now like to summarize the impact conclusions of the assessment. In summary, with implementation of the Applicant-committed mitigation measures, including the proposed erosion control and stormwater management plan, and the CEC conditions of certification, no significant impacts to the soils resource or agricultural resources would occur.

That concludes my testimony.

MR. THOMPSON: Thank you very much.

Mr. Ray is tendered for cross-examination in the area of soils and agriculture.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Questions from anyone here present?

Thank you, sir.

(Witness excused.)

MR. THOMPSON: We go -- our -- the next witnesses that we have in this area are in the water area. I don't know if you want us to roll through and do water or if you have a soils and ag witness you want to put on. Water? Got it.

Applicant would like to recall Mr. Roger Garratt. Mr. Garratt has been previously sworn today.  
Whereupon,

ROGER GARRATT,  
having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Garratt, would you please identify yourself for the record?

A Roger Garratt.

Q Mr. Garratt, is\n the area of water resources, am I correct that you are here to testify about the sources of water for the project and in that regard will be testifying to Exhibit 1, the Applicant's AFC, appendix N, which is the West Kern water district, a letter from that entity; Exhibit 2, Applicant's response to staff data request no. 21 regarding a backup water supply; and a portion of Exhibit 39, which is rebuttal testimony on the use of Chevron water?

A Yes.

Q You have any corrections, additions or deletions to make to that material?

A No, I do not.

Q Do you wish to offer a summary of the water resources area?

A The -- as I think you properly characterized this material, it -- my principal testimony has to -- goes to the nature of the supply of the water supply arrangements between the West Kern water district and La Paloma Generating Company. And to that end, we have executed a water supply agreement with the district.

MR. THOMPSON: Thank you.

Mr. Garratt is tendered for cross-examination.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Garratt, you indicated that you have completed or, I'm sorry, signed a contract for the water supply with the West Kern water district?

THE WITNESS: Yes. To clarify, we -- the contract for the raw water has been executed. We're still in the process of -- with the potable water supply, and that, you know, that's a much smaller quantity. That basically is just the sanitation water that's -- would be used for the workers for drinking water and --

MR. VALKOSKY: Right.

THE WITNESS: -- toilets and so forth. So that's a pretty straightforward kind of agreement.

MR. VALKOSKY: How recently did you complete negotiations for the raw water supply?

THE WITNESS: That's been several months ago. It's been, I think it may go back to 19-- to last year sometime. so it's been executed for quite a while.

MR. VALKOSKY: Okay, am I correct in understanding that you also need to complete negotiations with DWR for the turnout from the aqueduct?

THE WITNESS: The DWR has to approve the agreements. Those agreements were submitted to the DWR by the Kern County water agency which is the parent agency for the West Kern water district.

MR. VALKOSKY: And what is the status of those agreements?

THE WITNESS: It's our understanding that the DWR anticipates approving those agreements but is waiting for a final decision from the CEC in order to act.

MR. VALKOSKY: Okay, so in other words --

THE WITNESS: So they have no issues with the agreements per se.

MR. VALKOSKY: All right.

THE WITNESS: I believe there's one other condition of their approval which would be a final design for the turnout so they would have approval rights, if you will, over the turnout design.

MR. VALKOSKY: Okay, I also understand that -- I don't know if you're the right witness to answer this -- but you had explored the possibility of using water from Chevron for at least part of the project's water; is that correct?

THE WITNESS: We did look at that, and rejected that, which one of the exhibits goes to that point, and if you ask me any more questions on that I'll have to defer to our engineering manager to --

MR. THOMPSON: Mr. Valkosky, the next witness we're going to put up for a short discussion --

THE WITNESS: That would be Al Williams --



MR. THOMPSON: -- Al Williams --

THE WITNESS: -- would be the person to --

MR. VALKOSKY: Okay, I'll --

THE WITNESS: -- if you have more questions about why that water is not suitable from a chemical standpoint, if you will.

MR. VALKOSKY: Okay, and, Mr. Thompson, I look to you for guidance. Is it better to defer any questions on the zero discharge or the injection well, too?

MR. THOMPSON: Mr. Williams again.

MR. VALKOSKY: Okay, I'll do that.

MR. THOMPSON: On the zero-D.

MR. VALKOSKY: Okay, all right. Thank you, Mr. Garratt. Any other questions for Mr. Garratt?

Thank you, sir.

(Witness excused.)

MR. THOMPSON: Applicant would like to call Mr. Al Williams, please. Mr. Williams has not been sworn. Whereupon,

ALAN WILLIAMS,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Would you please state your name for the record?

A Alan Williams.

Q Are you the same Al Williams who prepared rebuttal testimony that appears in Exhibit 39 to this proceeding?

A Yes, I am.

Q And today you are here to testify to that portion of Exhibit 39, your rebuttal testimony; and Exhibit 42, which is identified as a response to Chevron letter regarding source water; and Exhibit 47, portion of Exhibit 47 regarding the third supplement to the AFC regarding the zero-discharge system; is that correct?

A Yes, that is.

Q You have any corrections, additions or deletions to make to that material?

A No, I do not.

Q Would you please briefly summarize, first, the use of Chevron water from a technical standpoint, and second, the zero-discharge alternative?

A The use of the Chevron water was investigated, and primarily reviewed in terms of its quantity and the quality, the chemical constituents that were provided to us by Chevron. The largest objection to using the water proposed by Chevron is that

its dissolved solids content is approximately 10 times the dissolved solids content in the West Kern water from the aqueduct.

Our cooling tower program envisions concentrating the West Kern aqueduct water by a factor of approximately 10 times to yield a -- to go from approximately 300 parts per million supply water to 3000 parts per million discharge water in the cooling tower blowdown. If we were to use the Chevron water which is approximately 3100 parts per million of dissolved solids as supply water, we would have, we would essentially be diluting that water with the West Kern aqueduct water and would subsequently increase the total consumption of water and increase the blowdown water from the cooling tower because of the chemistry constituents involved.

Q Zero-D?

A On zero discharge, we investigated zero discharge, a zero-discharge system, provided in the supplement 3 a tentative flow diagram and some quantification of what would happen. The good news in that is the capability of reusing some of the cooling tower blowdown would result in a net savings of water consumption to the project. Rough estimates, preliminary estimates show we would reduce total water consumption by approximately 10 percent.

MR. THOMPSON: Thank you very much.

Mr. Williams is tendered for cross-examination.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. ROHY: When you get the water from the West Kern aqueduct, do you -- does it require a pumping station to get the water to the plant site?

THE WITNESS: Yes, it does.

MR. ROHY: And where will that pumping station be?

THE WITNESS: Pumping station will be located very close to highway 58 and the aqueduct; will consist of approximately five pumps and will pump water then to inject into a pipeline that will service the facility I believe is approximately eight miles away.

MR. ROHY: And does the Applicant have the necessary permits to built those, that pumping station?

THE WITNESS: I believe we are in the process of getting those permits and, to my knowledge, the energy commission permit is the primary one that is involved there.

MR. ROHY: Okay, and you have control of that land for the pumping stations?

THE WITNESS: Actually Mr. Garratt's a better witness for the land control than I am.

MR. ROHY: While he's coming up, could you answer the type of motive power for the pumping station? What powers the pumping station?

THE WITNESS: They will be electric-driven pumps.

MR. ROHY: And is there electric supply at that site?

THE WITNESS: Either at the site or immediately adjacent to it so that a small feeder line would be, could be installed.

MR. ROHY: Thank you.

Whereupon,

ROGER GARRATT,  
having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

WITNESS GARRATT: The -- in addition to the final decision from the CEC in terms of the pumping station, we do need the DWR approval of the turnout and the design which I mentioned earlier. And the DWR has indicated they're waiting for the final decision.

MR. ROHY: My question was as to whose land or -- is the pumping station being built on and do you have adequate options on that land?

WITNESS GARRATT: That land is owned by Chevron. We're negotiating with Chevron for those rights.

MR. ROHY: Thank you.

(Witness Garratt excused.)

MR. VALKOSKY: Mr. Williams, when will the Applicant decide whether to use zero discharge or not?

THE WITNESS: I would anticipate we would make that decision in during our detailed engineering phase within the, oh, first three months of receiving certification from the commission.

MR. VALKOSKY: All right, thank you. Are you the correct witness to testify as to the use of dry or hybrid cooling system?

THE WITNESS: I'll give it a shot.

MR. VALKOSKY: You know, we've seen testimony which says that a use of a dry or hybrid cooling system will, of course, result in drastically lower water usage but that there are substantial economic costs attached. I'm interested in quantifying those economic costs in this case. Can you testify to that?

THE WITNESS: Again, I'll try. The numbers will be approximate, recognizing that it is a dynamic market and sometimes these values can change very swiftly.

The capital cost difference on a per-unit basis between a wet cooling tower system and a dry cooling tower system is in the neighborhood of seven to eight million dollars additional net cost for the dry cooling system. In addition, there are

substantial performance penalties that are incurred in a dry cooling system that are not part of a wet cooling system.

More precisely, we would expect the auxiliary power required to operate the fans in a dry cooling system to increase and be an additional one-to-two-megawatt penalty per unit, and the subsequent heat rate to the facility would also increase, the -- substantially because of that additional auxiliary power.

And probably more importantly, on, in the weather conditions like we see in the Bakersfield area, in the McKittrick area, which is characterized by hot, dry summer days, the dry atmospheric conditions are exactly the opposite of the thermodynamic conditions that would allow dry cooling to operate efficiently. A radiator, which is essentially what the dry cooling system is, operates most efficiently in a hot but humid climate -- actually in a cold, humid climate, would operate the best -- but the fact that we are in dry conditions really favor the wet cooling tower as in terms of getting the maximum back pressure off of the steam turbine system.

Again, it goes to the efficiency of the facility.

MR. VALKOSKY: Is it, or can you estimate on an annual basis a dollar figure penalty that you would incur, the project would incur, were it to use wet or a hybrid system? Or a percentage, an overall percentage reduction?

THE WITNESS: The engineer in me says that I would be more comfortable providing that answer either in writing or after some time with a calculator and paper and pencil to make sure I got a most accurate answer.

MR. VALKOSKY: That's acceptable.

Are you familiar with the exhibit we've identified as Exhibit 56, which is entitled A Public Notice of the Proposed EPA Class 1 Injection Well Permit?

THE WITNESS: I'm familiar with it, but we have a separate witness who is more qualified to --

MR. VALKOSKY: Okay --

THE WITNESS: -- address issues with that.

MR. VALKOSKY: -- I'll defer till then.

MR. ROHY: Are you the proper witness to talk about the zero-discharge system?

THE WITNESS: Yes, sir.

MR. ROHY: I was looking at your submission to us in May of '99 regarding supplement to the application for certification on zero-discharge system, and I noticed some relatively high numbers of magnesium, which I assume is very normal in California water, but five percent caught my attention. Is that a number by weight?

It's on page 2.2.

THE WITNESS: Yes, that is by weight. I would point out that that is the estimated percent of the solids from the crystallizer after all of the water has essentially, after 98 to 99 percent of the water has been evaporated off.

MR. ROHY: That's the material that would be taken to a landfill?

THE WITNESS: Yes.

MR. ROHY: So that's about five percent by weight. Is that -- what form is it in; is it a magnesium sulfate, primarily?

THE WITNESS: Yes, I believe it is.

MR. ROHY: Is that economically recoverable?

THE WITNESS: I don't know. We've not tried to analyze it from that viewpoint.

MR. ROHY: Just seems like a very valuable material there at a high concentration. Thank you.

MR. VALKOSKY: Are there any other questions for Mr. Williams?

Okay, thank you.

(Witness excused.)

MR. THOMPSON: Applicant would next like to call Ms. Cathleen Garnand. Ms. Garnand has not been sworn. Whereupon,

CATHLEEN GARNAND,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Ms. Garnand, would you please state your name for the record?

A My name's Cathleen Garnand.

Q And are you the same Cathleen Garnand that submitted prepared testimony contained in Exhibit 34 to this proceeding?

A Yes, I am.

Q In addition to that section of Exhibit 34, am I correct that you are here testifying today to section 5.5 of the AFC, Exhibit 1; Exhibit 12, section 3.3 on water resources; and Exhibit 28, a supplement to the AFC, section 3.3 on water resources?

A That's correct.

Q Do you have any corrections, additions or deletions to make to that material?

A No, I don't.

Q Would you please very briefly summarize your material on water?

A Yes, I evaluated impacts to water resources from the project. This included water quality and water quantity impacts for surface and groundwater resources, and these analyses in the

AFC and the AFC supplements that were provided as part of my testimony.

There are very few surface water features in the vicinity of the project, though mostly ephemeral streams except for the manmade irrigation channels and the California aqueduct. Water quality impacts to these ephemeral streams and channels will be mitigated through stormwater quality control measures implemented under the Applicant's NPDES permit.

As stated in the staff's conditions of certification, the 7 is required to develop and to implement a stormwater pollution prevention plan under the NPDES requirements. This plan identifies specific best management practices that will prevent contaminants from being discharged from any part of the project, and that also includes erosion that could occur during any ground-disturbing activities such a pipeline trenching.

Sanitary wastes will be discharged to a county-approved onsite septic system. The process wastewater will be either discharged through injection wells or using the zero-discharge system that was just discussed. Impacts to groundwater quality from these injection wells and the septic system are minimal and are addressed in the EPA's injection well permit conditions that will be discussed, I think, in the following testimony.

Water is provided to the plant site from the California aqueduct under the agreement with the West Kern water district. Both the Applicant and the staff have considered potential impacts from using this supply and have considered alternate sources to the supply, and we agree that the project complies with the state policy on use of inland waters for powerplant cooling.

That completes my testimony.

MR. THOMPSON: Thank you very much.

Ms. Garnand is tendered for cross-examination.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Ms. Garnand, does the -- in your opinion -- does the project's water usage comply with state policies in if it uses either of the injection well or the zero discharge, and let me back up, because as I understand zero discharge will use about 10 percent less water?

THE WITNESS: It does. It would use less water --

MR. VALKOSKY: Okay.

THE WITNESS: -- from the aqueduct.

MR. VALKOSKY: To conform with the state policy, is it necessary that it then use zero discharge because of the lesser water usage?

THE WITNESS: No, although that would be preferable that it does use less.

MR. VALKOSKY: Okay, preferable but --

THE WITNESS: But the --

MR. VALKOSKY: -- but not necessary?

THE WITNESS: Right. The policy looks at evaluating alternative sources to using the inland surface waters. So it's the project would still use inland surface waters with the zero-discharge system.

MR. VALKOSKY: Okay, and so then, but using direct injection is acceptable under the policy?

THE WITNESS: Right. The policy that I was referring to about inland waters is a water supply issue, not a water disposal, wastewater disposal issue.

MR. VALKOSKY: Okay. Any other questions?

Thank you.

(Witness excused.)

MR. THOMPSON: Thank you. As our final water witness, and this is Applicant would like to call Mr. Ray Ouellette. And here we have our opportunity to talk about the injection wells. Mr. Ouellette has not been sworn today. Whereupon,

RAY OUELLETTE,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Ouellette, would you state your name for the record, please?

A My name is Ray Ouellette.

Q Are you the same Ray Ouellette that submitted prepared rebuttal testimony that's part of Exhibit 39 to this proceeding?

A Yes, I am.

Q And you are here today to testify also to Exhibit 41, a revised class 1 UIC well information; Exhibit 48, which is the response by Applicant to USEPA regarding class 1 UIC permit; and Exhibit 56, which is the draft injection well permit, which I have copies of here today?

A Yes, I am.

Q Has Exhibit 56 been distributed?

A It has been distributed only to staff; has not been distributed to rest of committee.

(Documents distributed.)

BY MR. THOMPSON:

Q Mr. Ouellette, would you -- do you have any corrections, additions or deletions to make to your testimony?

A No, I do not.

Q Would you please briefly summarize the material that's contained in your testimony and the three exhibits that we just identified?

A Thank you, yes, I will. Basically I was retained by La Paloma to prepare an underground injection control permit application, which we did submit to the EPA back in February. The application contained the technical details of the construction of the underground injection wells, how they would be drilled, where they would be perforated, where the injection would take place, and whether or not there was any strata that would hinder or not be suitable for injection.

The application was deemed to be complete in, I believe, this April or May period, with the submittal of additional information, and on June 7th, the EPA issued their notice of intent to issue a permit. The document which was distributed today is that notification that a draft permit has been prepared and the public is invited to comment on the conditions that are contained within that document.

Q And the draft permit that we're looking at, is that contained in Exhibit 56 which is distributed today?

A Yes, it is.

MR. THOMPSON: Thank you. And with that, we would tender Mr. Ouellette for cross-examination.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Ouellette, when do you expect to get the final permit?

THE WITNESS: EPA has issued a 30-day comment period which will close, I believe, on July 10th, the reason being July 10th is that the official, legal public notice was published in the Bakersfield Californian on June 10, so the 30 days would run 30 calendar days to July 10th. They would then need to respond to any comments received.

To date, my discussion with staff has indicated that they have received very little comments, none of which are substantive. And I would expect the permit to be issued shortly after the close of public period.

MR. VALKOSKY: So by approximately August 1st, maybe?

THE WITNESS: Something like that, yes.

MR. VALKOSKY: Is there of the permits or any of the conditions imposed by EPA which would conflict with any of the conditions proposed by commission staff?

THE WITNESS: I am not aware of any conflicts.

MR. VALKOSKY: Okay, thank you. Any other questions for Mr. Ouellette?



Thank you, sir.

(Witness excused.)

MR. THOMPSON: That completes our exhibits and our witnesses in the water, soils and water resources area.

MR. VALKOSKY: Okay, Mr. Thompson.

Mr. Ogata, you have just Mr. O'Hagan; is that correct?

MR. OGATA: Correct.

MR. VALKOSKY: Call him on, please.

MR. OGATA: Staff's witness is Joseph O'Hagan.

Whereupon,

JOSEPH O'HAGAN,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OGATA:

Q Mr. O'Hagan, what is your job title at the energy commission?

A I'm an energy facility siting planner-2.

Q And what are your duties?

A I analyze soil and water resource impacts by proposed powerplant projects.

Q Okay, do you have before you the testimony of Joseph O'Hagan from the final staff assessment, which has been marked as Exhibit 35; the supplemental testimony, dated april 20th, which is Exhibit 45; and the testimony that was filed June 14th?

A Yes, I do.

Q Does this constitute all of your testimony in the area of soil and water resources for the La Paloma case?

A Yes, it does.

Q Did you write all this testimony?

A Yes, I did.

Q You have any changes or corrections?

A Yes, I do. On the April 20th testimony on, be the third page of the soil and water resources section, would be the third paragraph down and indeed the fourth sentence, basically in the middle of that paragraph. It starts a later estimate by the Sutter power project included, then the following sentence, this reduction in the cost estimate is, should be deleted.

The number I had there, the 20 that Calpine had estimated that for the Sutter power project, that cost for using dry cooling, \$25 million over the life of the project was incorrect, in fact, that was their capital cost estimate.

And on the testimony that was submitted June 14th, I, on the second page there is a reference, two references, under zero-discharge system, the last sentence of the first paragraph and the second sentence from the bottom paragraph on that page refer to a

soil and water resources figure, one which is not included, so it should be deleted.

Q Okay, you have any other changes or corrections?

A No, I do not.

Q Would you please summarize your testimony?

A Okay. Staff's analysis on the proposed project for soil and water resources looked at the potential for the proposed to cause accelerated soil erosion, induce surface or groundwater supply impacts, lead to surface or groundwater quality degradation, or contribute to or suffer from flooding.

The proposed project Applicant, rather, had submitted a detailed erosion control and stormwater management plan in response to a staff's data request that addressed all aspects of the proposed project. This plan identified a number of best management practices that if properly implemented would ensure that the project would not lead to a significant impact to soil resources through erosion or stormwater runoff.

The Applicant is, has received information from the Army Corps of Engineers that they can construct the facility under nationwide permit no. 12 for crossing several ephemeral streams by linear portions of the project, and the regional water quality control board will be issuing a 401 certification after commission approval that ensures that the project does not contribute to erosion control problems and sedimentation problems.

The proposed project is not located in a flood hazard zone, so that was not an issue.

The water supply concern is, is 95 percent of the proposed project's water supply will be from the state water project, which will require a new turnout in the California aqueduct. The -- this water'll be used primarily for cooling tower supply as well as the steam cycle. And the project will also be receiving potable water from the West Kern valley water district from a potable water line.

The state water project water will be coming from the West Kern valley water district's allotment under the Kern County water agency's entitlement to state water project water. Generally, that's showed in table 1 of the staff's FSA. West Kern is entitled to approximately 25,000 acre-feet of state water project water per year, as well as additional 10,000 acre-feet of what's termed interruptible water, which is additional water that may be available in a wet year, as well as that they purchase water from other water districts. West Kern supplies about 13,000 acre-feet per year to the customers, and the remaining amount of water has been stored as groundwater in an agreement they have with the Buena Vista water district.

Currently, West Kern water district has an excess of 200,000 acre-feet of water in storage. The proposed project will

require about 6000 acre-feet of water. This water has historically been diverted by West Kern and used in exchange with Buena Vista water district where they were given 6000 acre-feet of groundwater to, so they could provide potable water to the cities of Taft and McKittrick. This water, therefore, is not a new diversion from state water project but a redirection, if you will, of an existing diversion.

Staff took a look at the state water resources control board for inland sources of cooling water for powerplants. Initially I believe the Applicant had conversations with Chevron about using produced water or groundwater from their holdings. At the time, from what I understand, Chevron had indicated they had no water available. Later on, when staff was trying to acquire some groundwater information from Chevron they had indicated they had a change in plans and that produced water or, and/or, groundwater may be available.

Staff had correspondence with Chevron. The amount of produced and groundwater which as, was, be quite brackish, from 3000 to 6000 milligrams a liter for total dissolved solids, would be grossly inadequate to meet the project's needs; be basically about 1.6 million gallons per day, far short of what the project requires.

And it therefore, in terms of additional cost for the Applicant in treating this higher-TDS water, there would be no environmental benefit. In other words, negating the need for the aqueduct turnout, that sort of thing, because they would still need a substantial amount of water from the state water project's source.

Under this state water resources control board policy, we're also directed to evaluate alternative cooling technologies. This includes dry cooling and wet-dry cooling which is basically a hybrid system where you have, using water as well as air to cool facility. An evaluation of wet-dry also indicated that there probably would not be any significant environmental benefits to this source. It would be more expensive, it would also cause a penalty to the facility, the more that it wouldn't negate the need for the aqueduct and associated pipelines and things, that they would still need a substantial amount of water from the state water project.

Dry cooling would negate the need for an aqueduct, would make, probably negate the need for an injection well for wastewater disposal and the associated pipelines. However, evaluating the economic costs associated with dry cooling, as the Applicant's testimony indicated, it can be two or three times just for capital costs, more expensive than wet cooling. There is a substantial operational penalty associated with it.

Evaluating other dry cooling facilities, generally you find that they are in a coastal situation. Crockett, was, which is a powerplant project that the commission has certified, uses dry cooling where you have cool, moist air. It doesn't, the temperatures don't get exceptionally high. The staff was unable to calculate whether a dry cooling facility here would be very efficient. Certainly there'd an efficiency, major efficiency hit on the proposed project from dry cooling in western Kern.

Therefore, the staff concluded that use of the state water project water by the proposed project did not violate state water resources control board's policy.

Staff also evaluated the proposed project's wastewater disposal, which is about 700,000 gallons per day. As indicated in the previous testimony, the Applicant has -- excuse me, EPA has issued a draft permit for the proposed injection wells. There's a 30-day comment period which I -- will close early next month. Staff had talked to EPA staff members just last week and they had received very minor comment. So staff doesn't anticipate there'll be any problems and that the Applicant will get this project.

La Paloma had also requested to use a zero-discharge facility, which is that basically you use pressure and evaporate off water from your wastewater stream, creating a very clean distillate water that could be returned to the project, and as the staff witness had indicated, the savings in terms of water consumption for the project probably could be up to about 10 percent. What remains is a solid cake that would be trucked offsite. Staff's concern was to ensure that the solid waste was not hazardous. Information submitted by the Applicant indicated that would be well below the toxicity levels that are part of the criteria for hazardous waste in California.

Staff had recommended four mitigation measures -- excuse me, it's four condition of certification, ensure proper mitigation, proposed project, that a final staff supplemental testimony issued on June 14th, condition no. 4 there supplants the condition no. 4 that was contained in the final staff assessment.

Q That conclude testimony?

A Yes.

MR. OGATA: Thank you.

Mr. O'Hagan is available for cross-examination.

MR. VALKOSKY: Mr. Thompson.

MR. THOMPSON: We have no questions, and it is duly noted that five of our witnesses equal one of staff.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No.

MR. VALKOSKY: Mr. O'Hagan, could you -- you indicated an increase in capital cost and a decrease in operational

efficiency by the use of other than a wet cooling system. Could you quantify those a little more?

THE WITNESS: Well, the numbers I had provided in my testimony and that I'm familiar with stem from information that we gained from the San Francisco energy project, which -- a proposed facility, as well as the high desert project which is currently before the commission; and some information we've gotten from Calpine for the approved Sutter power project.

High desert has estimated that the cost of dry cooling facilities above a wet cooling, basically your wet cooling towers and your dry cooling, would be about \$14 million more. Sutter had indicated that just the capital cost for the dry cooling facilities would be about \$25 million, which is several times more than it would cost for the wet cooling.

You're estimating the cost or whether the penalty, if you will, in terms of operation is very difficult. It, certainly the individual design of the facility as well as the atmospheric conditions and how the facility is operated really dictate what the penalty would be. But you do see a significant loss because of back pressure on the condensers. You see there's parasitic load for the fans for dry cooling facilities. And some estimates are about 10 percent efficiency loss.

But I've seen a wide range of numbers and I wouldn't want to estimate which would be applicable to this case.

MR. VALKOSKY: Okay, so it could say up to 10 percent efficiency loss? Again, I'm just kind of looking for a ballpark.

THE WITNESS: Yes.

MR. VALKOSKY: That's all. You also indicated that wet cooling is best in hot, dry climate, essentially. My understanding is, though, we used dry cooling on the Sutter project; is that correct?

THE WITNESS: Yes.

MR. VALKOSKY: Now is there a substantial difference in the climate between McKittrick and Yuba City? Or is there another reason that it was appropriate there and you're not recommending it as appropriate here?

THE WITNESS: I think there was several reasons that proposed Sutter project had problems. They were going to use a substantial amount of groundwater and there was a lot of up to about 7000 acre-feet per year and there was a lot of concern by the local farmers about impacts both in terms of supply and groundwater quality. There was also an associated wastewater discharge.

And in Sutter County, at least, I would suspect that your winter climate, that it is more humid, that there's greater moisture in the air and that at least in those cooler months that the dry cooling facility would work pretty well there. Certainly

in summer conditions I couldn't differentiate between here and Sutter.

MR. VALKOSKY: Okay, so in essence there are just very project-specific differences that you must look into in determining whether or not to recommend the use of dry cooling?

THE WITNESS: Yes, that is.

MR. VALKOSKY: That correct, okay, thanks.

Are you familiar with the conditions contained in Exhibit 56, which is the federal permit we've just received?

THE WITNESS: Yes, yes, I reviewed the permit.

MR. VALKOSKY: Are there any conflicts between those conditions and the conditions we have proposed or you have proposed?

THE WITNESS: No, none at all.

MR. VALKOSKY: Okay. Okay, referring to pages 307 to 309 of Exhibit 35, which is the staff FSA, you list a number of mitigation measures, best management practices?

THE WITNESS: Yes.

MR. VALKOSKY: Etc. Are those included in the conditions of certification which you are proposing?

THE WITNESS: They should be included by reference with the erosion control plan. If you look at soil and water no. 2, proposed condition of certification, says the final plan shall contain all the elements of the draft plan with changes made to address the final design of the --

MR. VALKOSKY: Okay, and that specifically refers to those?

THE WITNESS: Yes, it does.

MR. VALKOSKY: Measures, okay. You indicated that state regional water quality control board could not act until the energy commission acted; is --

THE WITNESS: Right --

MR. VALKOSKY: -- is that correct?

THE WITNESS: -- their position is, is that they require a certified environmental impact report before they can issue the certificate, certification, and in light that we don't specifically certify an environmental impact report, their position is that the final decision would constitute then that certification of an EIR.

I must point out that discussions with attorneys for the state water resources control board who do represent the regional boards, that they disagree with that interpretation. So it's sort of an evolving issue.

MR. VALKOSKY: Okay, am I correct in -- or am I incorrect in believing that we have an MOU with the board?

THE WITNESS: Right, we have a staff agreement between the state water resources control board, and the regional water

qualities control boards and the energy commission staff. And the purpose of that staff agreement was to have the regional water quality control boards issue a draft NPDES permit for like point-source discharges, like to surface water or wastewater discharge requirements such as an injection well that the regional board was permitting instead of EPA, or for an evaporation pond. And by the time staff completed the FSA we would have a final staff, regional water quality control board staff, permit.

Their feeling is, is that they can't have the regional water quality control board certify the NPDES permit or the waste discharge requirement until we certify a proposed project.

MR. VALKOSKY: Okay, so this --

THE WITNESS: Final decision.

MR. VALKOSKY: -- so the present it's basically a question that wasn't necessarily contemplated within the --

THE WITNESS: Yes.

MR. VALKOSKY: -- in the MOU?

THE WITNESS: Yes. Yes, and we are meeting and working on this issue.

MR. VALKOSKY: Okay, do you have any guess(slash)/hope as to when --

THE WITNESS: Well --

MR. VALKOSKY: -- a final resolution would be achieved?

THE WITNESS: I'm hoping actually in the next couple months. Its process has taken about 12 years, so maybe I'm unduly optimistic but we do seem to be making progress.

MR. VALKOSKY: Wouldn't want to rush you, you know. Last question, Mr. O'Hagan, on Exhibit 45, which is your April 20th revision, under soil and water resources, you list four items which are outstanding, and in earlier testimony you indicate that at least some of these items would prevent staff from recommending approval of the project.

THE WITNESS: I'm sorry --

MR. VALKOSKY: Okay --

THE WITNESS: -- exhibit?

MR. VALKOSKY: -- okay, I'm looking at page, the cover page, actually, of Exhibit 45, dated April 20th, 1999, and it's a summary of the revised documents.

Okay, and in it, you have that page?

THE WITNESS: I'm sorry, I don't.

Oh, okay, thank you. Okay.

MR. VALKOSKY: Okay, you indicate that, you know, certain, the summary, let me phrase it that way, the summary indicates that certain items have yet to be completed, okay, a class what, 1, injection well permit, well again, we just received some of that today?

THE WITNESS: Right.

MR. VALKOSKY: Or the preliminary version of that today?

THE WITNESS: Right.

MR. VALKOSKY: Okay, we've heard testimony that the agreement between DWR concerning the turnout is moving along but can't be completed until the commission, until we issue our final environmental action; and no. 4, an agreement regarding DWR and the West Kern water district ability to place groundwater into the aqueduct?

THE WITNESS: Right.

MR. VALKOSKY: Okay.

THE WITNESS: The final item that had gone forward with the information on the turnout, the new turnout of state water project water, and my last discussion with West Kern and DWR staff, they saw no problems. And in fact, this is merely a renewing and ongoing permit that's --

MR. VALKOSKY: Okay --

THE WITNESS: -- that West Kern's had for a number of --

MR. VALKOSKY: -- so --

THE WITNESS: -- years.

MR. VALKOSKY: -- so the fact that some of these items are as yet not finalized would not, in your view, prevent the commission from certifying the project; is that correct?

THE WITNESS: That's correct. My conversations with Department of Water Resources staff indicated that they had no concerns except sort of the engineering aspects of constructing the new turnout.

MR. VALKOSKY: Which would be done in final design anyway, right?

THE WITNESS: Correct.

MR. VALKOSKY: Okay.

MR. ROHY: Mr. O'Hagan, there're some gas turbine operators that chill the inlet air of gas turbines to get greater power during the periods when it's hot and dry. Are you aware that this particular Applicant is planning to use water to chill the inlet? I'm not suggesting that they are, I'm just saying is there, is that the case, to your knowledge?

THE WITNESS: Not that I recall, but --

MR. ROHY: Thank you. Second question, are you aware of any commercial technology that's available to condense the considerable water that's in the exhaust of a gas turbine and use it for cooling purposes?

THE WITNESS: I -- there is some proposed, there is some technology. I have not seen it applied on any large-scale facility. I think in some situations in water-short areas, Saudi Arabia and that sort of thing, there has been some technology applied to that, but I'm really not very knowledgeable of how it works.



MR. ROHY: Thank you.

MR. VALKOSKY: Thank you. Are there any more questions for Mr. O'Hagan?

Are there any questions from anyone here present on the general topic of soil and water resources?

MR. THOMPSON: Applicant would like to recall Mr. Williams to answer a question.

MR. VALKOSKY: Please.

Thank you, Mr. O'Hagan.

THE WITNESS: Thank you.

(Witness excused.)

MR. THOMPSON: Mr. Williams has been previously sworn.

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Whereupon,

ALAN WILLIAMS,

having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Williams, when you were on the stand a little bit ago, you were asked a question by the committee regarding dry cooling and a cost penalty for dry cooling in this weather regime. Have you had a chance to use your trusty calculator?

A Yes, sir, I have.

Q And do you have an answer?

A I have some approximate numbers. Roughly, the performance penalty in Bakersfield-type conditions would equal about a two percent performance penalty on a hot summertime day like we're seeing today. That two percent penalty would translate for a four-unit facility like the La Paloma project and again with some rough estimates of the cost of power marketing on hot days, that two percent penalty would translate to about \$1.6 million dollars per year of lost revenue opportunities to the project.

That's not the largest economic loss that we would potentially incur with dry cooling. I calculated about a 15 percent efficiency loss and a 15 percent increase in heat rate; whether it's 10 percent or 15 percent, the number there is even more staggering because that is applied to a total yearround operating condition. Rough numbers for that was again some estimates on the cost of fuel that would have to be -- the increased cost of the fuel that would be consumed, that cost would be in the range of 20 to 21 million dollars a year for the four-unit facility. Compare that with the cost of water and it quickly becomes economic to try to use dry cooling in this type of environment (sic).

MR. THOMPSON: Thank you, sir.

Mr. Williams is tendered from cross-examination.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

THE WITNESS: There's another question that --

MR. THOMPSON: Oh, I'm sorry.

THE WITNESS: -- I could answer if we'd like, and it's the cooling on the inlet for the facility. We have not proposed to use chillers to cool the inlets on hot days to increase the performance of the facility. Again, the reasons there are economic. The value of the increased cooling versus the cost is not presently economical.

What we are proposing to use is evaporative cooling on the inlets which, as I mentioned before, the environment works best for evaporative cooling on the cooling towers; it also is an excellent and inexpensive performance enhancement to use on hot days here in these dry atmospheric conditions. Essentially the evaporative cooler is to simply uses water in a filter medium on the air inlet to the gas turbines. It will improve the performance on a hundred-degree day like today by approximately eight megawatts per unit.

And that is part of our proposal and part of our design.

MR. ROHY: And the estimates for that amount of water are included in the total estimates that you've provided to us?

THE WITNESS: Yes, they are. In fact, the -- per -- the numbers are shown on the water balances in our application.

MR. ROHY: Thank you. One last comment is that I assume that's highly purified water that you're putting on the inlet filters?

THE WITNESS: We believe that we can use just filtered water from the aqueduct. We're in some discussions with the turbine manufacturers to actually identify exactly what water quality conditions that they recommend and will support for us to use. The high quality of the aqueduct water allows us to use that with just -- well, we believe, with just filtration and keeping frogs out and things like that.

MR. ROHY: Thank you.

MR. VALKOSKY: Are there other questions, comments or observations from anyone else on the topic of soil and water?

(Witness excused.)

MR. VALKOSKY: Are there any exhibits that parties would like to move at this time?

MR. THOMPSON: Thank you. Applicant would like to move the following exhibits: 41, 42, 47, 48, and 56.

MR. VALKOSKY: Any objections?

MR. OGATA: No objections.

MR. VALKOSKY: Any objections, Ms. Poole?

MS. POOLE: No objection.

MR. VALKOSKY: No, okay, those exhibits are admitted into evidence.

(The documents referred to,  
having been previously marked  
for identification as  
Exhibits 41, 42, 47, 48 and 56,  
were received in evidence.)

MR. VALKOSKY: Mr. Ogata, do you have any?

MR. OGATA: Yes, staff would like to move Exhibit 45 into evidence at this time.

MR. VALKOSKY: Objections from anyone?

Exhibit 45 is admitted.

(The document referred to,  
having been previously marked  
for identification as Exhibit  
45, was received in evidence.)

MR. VALKOSKY: Okay, at this time we'd like to take a 10-minute recess before we address the final topic. Thank you.  
(Whereupon, a brief recess was taken.)

MR. VALKOSKY: Okay, last topic, air quality.  
Mr. Thompson.

MR. THOMPSON: Thank you very much. We have two witnesses in air quality, Mr. Steiner and Mr. Sylte, who will be testifying following Mr. Steiner on the limited area of interpollutant trading.

Applicant would call, like to call Mr. Steiner, who has not been sworn.

Whereupon,

WILLIAM STEINER,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Steiner, would you state your name for the record, please?

A Bill Steiner.

Q And are you the same Bill Steiner that has submitted testimony to this proceeding in Exhibit 34?

A 34. Probably did. Let me check. Or more than that, I guess. 34 sounds right.

Q And I'm going to read a list of exhibits that I believe you are sponsoring, and if I'm correct, would you say so after I read the list? Exhibit 1, AFC, section 5.2 on air quality, and appendix K, air quality documentation; Exhibit 2, which responses

to staff data requests nos. 1, 4, 7, 8, 9, 10, 11, 12, 13, 23, 24, 25, 26, and 27; Exhibit 4, which is an amendment to the DOC; Exhibit 8-A, which is the PSD application; Exhibit 8-B, which is the DOC application; Exhibit 12, portion of section 3.1, supplement to the AFC; Exhibit 13, which contains errata to supplement 1 or Exhibit 12; Exhibit 18, CO, NOX and VOC emissions; Exhibit 19, corrections to the AFC supplement; Exhibit 20, PM-10 precursor offset ratio analysis and revised emissions calculations; Exhibit 28, supplement to the AFC section 3.1 on air quality; and finally, Exhibit 29, supplement to PSD application? Did I get them all?

A I think you might have missed two, and a little clarification on Exhibit 20, I helped prepare that. Mr. Sylte will take the lead on that, the PM-10 precursor offset ratio. And I think we missed Exhibit 47 -- no, we didn't miss that one. 52, the -- we were going to sponsor the EPA PSD permit that's been proposed and we want to enter that into the record.

Q Thank you very much. With regard to Exhibit 52, recognizing that it was not prepared by you or under your direction, is it your belief that the PSD permit contained in Exhibit 2 -- 52 is true and correct and we received a copy of this document from EPA?

A Yes.

Q Thank you very much. Do you have any corrections, additions or deletions to make to any of your material?

A I don't.

Q Would you please briefly summarize the air quality section of the material?

A Yes. In summary, quickly, I managed a team of engineers and scientists that evaluated emissions, emissions control technologies for both construction and operation of the proposed facility. We evaluated best available control technology, or BACT. We evaluated applicable state, federal and local laws, ordinances, regulations and standards, or LORS. We conducted ambient air quality modelling, using agency-approved procedures, pre-approved for this project, and using EPA-approved air quality models.

Lastly, we supported the evaluation of mitigation measures for this project. We evaluated ERC requirements and then provided some technical support in the evaluation of the ERC packages.

In conclusion, our analysis concluded that this project would comply as proposed, with all of its proposed mitigation measures and control technologies, would comply with all LORS and that it would have no significant air quality impacts.

Did you want me to talk a little bit about the PSD permit and its status, too?

Q I think that would be helpful?

A Okay, as you're aware, you've seen in Exhibit 52 the Environmental Protection Agency issued a proposed PSD permit for the project on May 18th. Their 30-day public comment period closed somewhere around June 18th. I've talked with Steve Branoff, the staff member responsible for this permit at EPA region 9, and he indicates to me that only PG&E Gen and a vendor, equipment vendor, commented, very minor comments on the permit, and he anticipates finalizing the PSD permit maybe this week, but certainly by next week, subject to management sign-off.

And that once the final PSD permit is out, that starts a 30-day appeal period and then it's final. So it should be final before the end of the -- before the decision.

Q Mr. Steiner, with regard to staff testimony, and revisions to staff testimony, specifically those contained in Exhibit 4, have you had a chance to review the conditions of certification and the verifications thereto?

A Which exhibit was that?

Q 54, the --

A 54, okay.

Q -- revised and supplemental staff testimony --

A Yes, I have.

Q -- dated June 14th?

A I've reviewed that.

Q And I have in front of me a document entitled Air Quality Testimony Errata. This has not been introduced yet but anticipation it will be introduced; have you had a chance to review that?

A I have. Those are in response to some comments that I submitted on behalf of the Applicant.

Q And the DOC of the district, you've had a chance to review that?

A Correct.

Q Now with regard to the conditions of certification and verification contained in these documents, do you recommend to the Applicant, La Paloma Generating Company, that they accept those conditions of certification and verification?

A Yes, we've reviewed them thoroughly and spent a lot of time working with both agencies.

MR. THOMPSON: Great. Thank you very much.

Mr. Steiner's tendered for cross-examination.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MR. VALKOSKY: And Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Steiner, when will the Applicant make the decision as to whether or not to install SCONOX technology?

THE WITNESS: It's my understanding, and perhaps the Applicant can speak to this if this isn't adequate, it's my understanding that it's their intent and desire to use SCONOX. However, the obstacle at this time is that ABB, the current supplier of SCONOX, the vendor for SCONOX, is in the process of evaluating SCONOX, which has been proven on smaller engines but has not been proven out on larger applications of this type. They're in the process of a 12-to-14-month evaluation period which began four months ago, maybe, something like that.

And we're awaiting some news of how that process is going on, but at this time it is not available for commercial purchase and use, and if it becomes commercially available before the turbines have to be ordered, my understanding is that it will be ordered for the fourth turbine.

MR. VALKOSKY: Okay, and how long of a period is there until the turbines have to be ordered?

THE WITNESS: Think I would defer to Mr. Garratt on that one.

MR. THOMPSON: If it please the committee, we can ask Mr. Garratt when he takes the stand at the end.

MR. VALKOSKY: That would be fine.

Mr. Steiner, for which pollutants does BACT apply?

THE WITNESS: BACT applied to all of the criteria pollutants, and here I'm speaking of the BACT as the state defines it. There's a slight difference in federal law. It applied to NOX or nitrogen oxides, carbon monoxide or CO, sulfur oxide and PM-10. At the federal level, because of the attainment situation here in the valley, it applied to NOX, CO and PM-10.

MR. VALKOSKY: Which pollutants are --

THE WITNESS: And I should correct that; that also applied to SO-2.

MR. VALKOSKY: SO-2.

THE WITNESS: Yes, federally.

MR. VALKOSKY: Okay, so was that, that was sulfur dioxide --

THE WITNESS: Yes.

MR. VALKOSKY: -- rather than just ox?

THE WITNESS: Yes.

MR. VALKOSKY: Okay, for which pollutants are emission-reduction credits required in this instance?

THE WITNESS: For this project, nitrogen oxide emission reductions required credits. PM-10, SO-2. It's not required for CO in this case because it is an attainment area and because modelling demonstrated that it was less than the impacts of CO emissions are less than significant.

MR. VALKOSKY: Okay, what is the status of the emission-reduction credits in this case?

THE WITNESS: And I'm going to defer to Mr. Sylte and Mr. Garratt on that question.

MR. VALKOSKY: Okay.

MR. ROHY: You mentioned that SCONOX is not commercially available in this size class. Was that answered in reference to ABB's engines or all engines in, to your knowledge?

THE WITNESS: I think Mr. Williams can give you more detail, but I understand that ABB has the license to provide SCONOX for all gas turbines in this size range.

MR. ROHY: Are you the right witness to ask about the technology of SCONOX?

THE WITNESS: Not very deep.

MR. ROHY: Is Mr. Sylte the witness?

THE WITNESS: Mr. Williams, probably.

MR. ROHY: Mr. Williams?

THE WITNESS: Yes.

MR. ROHY: Thank you.

THE WITNESS: It's basically a catalytic process.

MR. ROHY: I'm concerned about the active chemical in there and I believe it's potassium?

THE WITNESS: Yes. Potassium carbonate. It's called a catalytic process but it, as a chemist, it sort of, you know, it's not quite catalytic.

MR. ROHY: Have there been any safety studies done on this chemical in this environment, to your knowledge?

THE WITNESS: Not that I know of.

MR. ROHY: Are there fire hazards of using a potassium carbonate?

THE WITNESS: No.

MR. ROHY: And that potassium carbonate is converted into a potassium nitrate?

THE WITNESS: Yes.

MR. ROHY: Is that a hazardous --

THE WITNESS: And then reconverted back.

MR. ROHY: Yes. Is that a hazardous chemical, from a fire safety point of view?

THE WITNESS: My recollection is that potassium nitrate has some hazards.

MR. ROHY: I believe it may be somewhat akin to certain explosives?

THE WITNESS: May be part of gunpowder or something, but it's --

MR. ROHY: I believe so.

THE WITNESS: -- it's in small concentrations. I haven't heard of these exploding, but --

MR. ROHY: I certainly would like to have more information on the safety of SCONOX because we're hearing that a lot in many cases.

THE WITNESS: That's a good question. That one hasn't come up before.

MR. VALKOSKY: All right, thank you. Any other questions?

Okay, thank you, Mr. Steiner.

(Witness excused.)

MR. VALKOSKY: Next witness, Mt. Thompson.

MR. THOMPSON: Thank you. Mr. Sylte. Has not been sworn. Mr. William Sylte. Whereupon,

WILLIAM SYLTE,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Would you please state your name for the record>?

A My name is Bill Sylte.

Q Are you the same Bill Sylte whose prepared testimony appears in Exhibit 34 to this proceeding?

A Yes, I am.

Q And am I correct that today you are sponsoring Exhibit 2, staff responses to staff data request no. 15 on the interpollutant trading ratio; Exhibit 33, which is the PDOC appendix I?

A Yes, that's true.

Q Okay, Exhibit 20, which a letter regarding PM-10 precursor offset ratio analysis and revised annual emission calculations; is that correct?

A I'm not sure about the last one, can you --

Q That's the one your friend, Bill Steiner just threw to you.

A Oh.

MR. STEINER: It's the PM-10 interpollutant --

THE WITNESS: Oh, I -- yes.

BY MR. THOMPSON:

Q Would you please very briefly summarize your testimony here today?

A Thank you. I've been the lead author of a work effort to address the use of interpollutant offsets, that is, specifically the use of nitrogen oxides credits or NOX credits to offset a portion of the project's particulate emissions.

Our work demonstrated that in this area of the San Joaquin valley, NOX emissions do produce or lead to the formation of particulate matter, especially during the winter months when



the particulate problem in this area is at its height and the peak concentrations occur. Conclusion from this was that it is appropriate to use NOX credits to offset project particulate emissions.

We also applied two independent methods to quantify the relationship between NOX emissions from a project and particulate matter in the atmosphere. The methods, though they were independent, did come up with similar and consistent results. The San Joaquin valley unified air pollution control district used that analysis and those results as a basis for their decision to establish an interpollutant ratio for this project.

Their decision was to require a ratio of 2.22 to one, which means that for every ton of particulate emissions which we would like to offset with NOX, we would have to produce 2.22 tons of NOX credits. That condition has been carried forward in these proceedings, as I believe air quality condition 17.

That concludes my summary.

MR. THOMPSON: Thank you very much.

Mr. Sylte is tendered from cross-examination.

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: No questions.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Sylte, can you answer any questions concerning the status of the emission-reduction credits?

THE WITNESS: I believe Mr. Garratt has got the big --

MR. VALKOSKY: Okay.

THE WITNESS: -- picture on that. Sorry.

MR. VALKOSKY: Okay, thank you.

(Witness excused.)

MR. THOMPSON: Applicant would like to recall Mr. Garratt.

And while Mr. Garratt takes the stand, I have a number of cleanup items that I'd like to present at this time as well as polishing off air quality.

Mr. Garratt, you are --

MR. VALKOSKY: As part of Mr. Garratt's testimony?

MR. THOMPSON: Yes.

MR. VALKOSKY: While he is on the stand?

MR. THOMPSON: Yes, if that's acceptable.

MR. VALKOSKY: Okay.

Whereupon,

ROGER GARRATT,  
having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Garratt, first of all, in air quality you've heard the question asked regarding the status of the ERC offsets; would you like to comment?

A La Paloma Generating Company has all the offsets required. I believe that within the determination of compliance that was prepared by the San Joaquin air district that the air district did a very excellent job of summarizing those credits and the application of those credits to the various different pollutants.

Q Second, with regard to the timetable for the purchase of SCONOX equipment, is there -- would you like to comment on that, I'd --

A Okay, the -- well, I think Mr. Steiner correctly characterized the situation, that we are prepared to apply SCONOX on unit no. 4 if it is commercially available. The -- at this point we have nothing from -- excuse me -- from ABB that indicates that it is. The -- because SCONOX would be such an integral part of the unit 4 power train, ABB has told us that that decision needs to be made in the beginning of their contractual process. There's kind of two milestones; at the beginning of the process, the notice to commence engineering and then the notice to proceed.

And they've told us that that notice to commence engineering, that first milestone, is really the cutoff date, and based on the best information that we have right now, that would be sometime this fall. And so at this point it's, I guess, at best uncertain whether SCONOX will even be commercially available by that time.

Q Thank you. Mr. Garratt, with regard to the status of the encroachment permits for the project?

A The -- in -- maybe as a way of elaboration, there's a few different categories of encroachment permits, if I can find my notes.

There's -- we essentially have some railroad crossings encroachment permits, road encroachment permits where we cross either California highways or county roads, and then other crossing permits which are principally in the ag field. We crossed the California aqueduct and then a number of other irrigation canals and ditches.

And we have all of those in, we have all of those crossing permits with the exception of the county road permits, and the county road permits, we have applied for all of those permits but the county has told us that they will issue those permits after the energy commission gives its final decision.

Q Mr. Garratt, Exhibit 46 to this proceeding is a staff document which contains revised testimony on waste management noise, hazardous materials, and Exhibit 55 contains a new

condition of certification on transmission system engineering. Has the Applicant had a chance to look at those revised conditions of certification and do you accept those?

A We have reviewed those and we do accept those.

Q Now finally --

MR. THOMPSON: And let me pause here. Did you want to recall Mr. Williams on the SCONOX chemistry? Okay.

BY MR. THOMPSON:

Q Mr. Garratt, you're our last witness, this is the last hurrah of the project. On behalf of the project, as project developer, do you accept all of the conditions of certification and the verifications that have been proffered by staff, the district incorporated within the staff's analysis, that we, that are spread throughout in a number of the exhibits but primarily appear in the final staff analysis?

A Yes, we do.

Q Do you have any closing comments on behalf of the Applicant?

A Well, just I would like to say that on behalf of US Gen, I wanted to thank the CEC staff for the effort that they've put in during this process. In our view, it's been a very professional, very diligent effort by all of the various staffers involved, and so we appreciate that.

We also appreciate the effort of the committee. Obviously the committee's work still has a few more months before it's complete, but we appreciate that effort as well, and look forward to moving the project through these final stage of permitting and into construction and operation.

So thank you.

MR. VALKOSKY: Just a couple more questions before we let you go, Mr. Garratt. When you say that you won't know if SCONOX is commercially available until this fall, on a realistic timetable, you'll have to make a decision as to whether or not to order your turbines. Does that commercial availability determination realistically coincide with your determination as to order the turbines?

THE WITNESS: Well --

MR. VALKOSKY: Or not?

THE WITNESS: -- let me, maybe let say it a little bit differently, because what I'm saying is this fall is when we would anticipate placing the order for the turbines, based on how we see the permitting finishing up and the CEC's final decision. And so it's really at that time that we have to make a yes-or-no decision on SCONOX. And so unless the SCONOX, unless ABB changes their position on SCONOX and tells us that it is commercially available at or prior to that time and gives us the kinds of commercial

information and guarantees that we'd need, then we would really have no other choice but to go with the SCR system on unit no. 4.

MR. VALKOSKY: Okay, so if I could look at in terms of presumptions, presumably you will go with SCR unless ABB notifies you before you order the SCR-equipped turbines that SCONOX is commercially available; is that another way of --

THE WITNESS: I think that's a -- would be a correct way to say that, yes, that --

MR. VALKOSKY: Okay.

THE WITNESS: -- because obviously we have all the commercial information that we need on it, on SCR --

MR. VALKOSKY: Right.

THE WITNESS: -- systems. We do not have that for SCONOX.

MR. VALKOSKY: Okay, last question, you stated that the emission-reduction certificates have been acquired. What do you mean by that exactly, I mean, there're different ways of acquiring these or acquiring the rights to them, and I'd like you to explain that further.

THE WITNESS: Okay, we have purchased credits from four different entities. In one case, we purchased those essentially, well, we've made a down payment and we'll make future payments subsequently, but those credits have already been transferred into our name.

In another case we have an option agreement and so in that particular -- that's for a very small quantity of credits. We've made the option premium; we have not exercised the option. Those credits have not yet been transferred into our name, but we have provided the air district with a copy of that option agreement so that I believe they're going to testify as well that we have control over those particular credits.

And then in the case of the last two suppliers, we purchased those credits outright and they've been transferred into our name.

MR. VALKOSKY: Okay, so in three cases there's been an actual transfer and in one you have a legally enforceable option at the present time?

THE WITNESS: Yes.

MR. VALKOSKY: Thank you. Any questions from any of the parties for Mr. Garratt?

MR. OGATA: No questions.

MS. POOLE: No questions.

MR. VALKOSKY: Ms. Poole. Okay, anyone here present to question any of the Applicant's witnesses on air quality or Mr. Garratt on air quality and the matters concerning the encroachment permits?

Thank you, Mr. Garratt.

(Witness excused.)

MR. OGATA: With the committee's permission I'd like to call Leonard Scandura of the San Joaquin valley unified air pollution control district.

Whereupon,

LEONARD SCANDURA,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

MR. OGATA: Good afternoon, Mr. Scandura. Thank you very much for coming.

DIRECT EXAMINATION

BY MR. OGATA:

Q Could you please start by telling us your job title at the district?

A I'm a senior air quality engineer in the permit services division of the San Joaquin valley air district.

Q And what are your duties there?

A To review applications for new and modified stationary sources and also to review applications for emission-reduction credits, and to support district, other district permitting and compliance actions.

Q Do you have before you the final determination of compliance, dated May 28th?

A Yes.

Q Did you prepare this document?

A Yes.

Q Did you conclude that La Paloma Generating Project meets the requirements of the applicable new source review rule?

A Yes.

Q And did you also conclude that this project also meets all other district regulations?

A Yes.

Q Have you identified those regulations with which La Paloma has to comply in the DOC?

A Yes.

Q Have you identified the required best available control technology and mitigation measures in the DOC?

A Yes.

Q And you set forth a number of conditions in the DOC with which La Paloma will have to comply?

A Yes.

Q Has La Paloma, well, has the DOC identified the complete set of emissions offsets?

A Yes.

Q And are those offsets going to be obtained prior to the CEC licensing?

A The conditions in our DOC require that La Paloma either purchase or have option contracts for all ERCs 30 days prior to the commencement of construction. As Mr. Garratt identified, they have purchased all but one of the sources; for the last source they have an option agreement for those offsets. That's about one and a half percent of the total offsets needed.

Q Is there anything else you'd like to tell the committee about any particular issues in the DOC?

A No.

MR. OGATA: I have no further questions of Mr. Scandura.

MR. VALKOSKY: Mr. Thompson.

MR. THOMPSON: We have no questions. Thank you, Mr. Scandura.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Scandura, again thank you for appearing today. We deeply appreciate it. I've just got a couple of questions.

Has your BACT determination been reviewed by USEPA?

THE WITNESS: Yes.

MR. VALKOSKY: Have, has EPA had any comments on it?

THE WITNESS: They commented in our preliminary determination of compliance. They commented on some averaging times used in the BACT emission levels. We subsequently revised the averaging times and the BACT emission levels to be consistent with their requirements.

MR. VALKOSKY: Okay, so as it appears in the final determination of compliance is it your understanding that your BACT determination is consistent with federal guidelines?

THE WITNESS: Yes.

MR. VALKOSKY: And again just to assist my own understanding I'd like to refer to you to air quality condition 54 which basically states no air contaminants shall be released into the atmosphere which causes a public nuisance. What are the criteria for determining causing a public nuisance?

THE WITNESS: That would require that a person actually be affected by those emissions and be, and that it be verified by the district.

MR. VALKOSKY: Okay, so that's something that would be initiated by someone who at least thinks they're being impacted and then you would investigate it?

THE WITNESS: That's correct.

MR. VALKOSKY: That correct, okay. But one question I'd -- and Mr. Ogata hinted at it -- under the energy commission statute, we are required or the requirement is that the applicant

identify and obtain sufficient emission-reduction credits prior to the commission licensing things. In your DOC on, at, well, air quality condition 18, I read it as under district rules the documentation is not required until 30 days prior to commencement of construction. Now we can have a conflict of requirements here.

Do you certify as the air pollution control district's representative that Applicant has in fact identified and obtained sufficient emission-reduction credits at this time?

THE WITNESS: They have obtained 99 percent of them and the remaining one percent they have an option contract for.

MR. VALKOSKY: Okay, so under your definition of obtaining a legally enforceable option contract does not comply with your requirements?

THE WITNESS: No, the -- it does comply.

MR. VALKOSKY: It does comply, so --

THE WITNESS: Yes.

MR. VALKOSKY: -- then have they, given that clarification --

THE WITNESS: Yes.

MR. VALKOSKY: -- have they in fact --

THE WITNESS: Yes.

MR. VALKOSKY: -- identified and obtained 100 percent --

THE WITNESS: Yes.

MR. VALKOSKY: -- at this time?

THE WITNESS: That's correct.

MR. VALKOSKY: Okay, thank you.

Okay, are there any other questions for the air district?

MR. LAURIE: I just have a clarification on the public nuisance question. How are you defining public nuisance? Are we, is the Applicant free to anticipate public nuisance as codified under state law?

THE WITNESS: Yes.

MR. LAURIE: Is that your understanding, Mr. Thompson?

MR. THOMPSON: That is my understanding, sir.

MR. LAURIE: Thank you.

MR. VALKOSKY: Are there any other questions for the district?

MR. OGATA: Mr. Valkosky, I have one point of clarification.

MR. VALKOSKY: Certainly.

MR. OGATA: We have Exhibit 33 which is a preliminary determination of compliance. I don't believe that has yet been in, received into evidence. Given the fact we have a final DOC, do you still think it's appropriate, necessary to admit the preliminary DOC into evidence?

MR. VALKOSKY: I certainly don't think it's necessary. It certainly provides evidentiary background if someone wanted to go back and check it.

MR. OGATA: So we should ask Mr. Scandura, I assume he prepared --

MR. VALKOSKY: Yes.

MR. OGATA: -- the preliminary DOC as well, and based on that maybe we could enter it into evidence the, if you like.

MR. VALKOSKY: Okay, Mr. Scandura.

THE WITNESS: Okay, I'd have to get that to you.

BY MR. OGATA:

Q Did you prepare the preliminary DOC?

A Yes.

MR. OGATA: I don't, I think we have a copy of it, so I just want to make sure that for the record we know who the author is. Based on that I would move it into evidence.

MR. VALKOSKY: Okay, and we'll move the exhibits again.

Thank you. I thank you for the cooperation of the district during these proceedings.

(Witness excused.)

MR. OGATA: And staff's witness is Keith Golden. Whereupon,

KEITH GOLDEN,  
having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OGATA:

Q Mr. Golden, what is your job title at the energy commission?

A Senior mechanical engineer.

Q What are your duties?

A I prepare detailed air quality analysis as testimony for powerplant project proposals in front of the energy commission.

Q You have before you the revised testimony of Keith Golden in air quality, dated June 11th, 1999, which was filed by staff on June 14th, 1999?

A Yes, I do.

Q Did you write this testimony?

A Yes, I did.

Q Do you have any changes or corrections to this testimony?

A Yes, I do. I handed out a supplement called air quality testimony errata, that you should have a copy of, and we could go over these point by point to put this into the record. Is that your preference, Mr. Ogata?

MR. OGATA: Actually my purpose was just to read it in because we really didn't want to make this page an exhibit, but



I'll leave that you and Mr. Valkosky to determine whether you want to --

MR. VALKOSKY: Reading it in is fine, Mr. Ogata.

BY MR. OGATA:

Q Okay, Mr. Golden, if you wouldn't mind, just quickly read the --

A Okay.

Q -- changes into the record?

A These are all under the air quality conditions as proposed air quality conditions, certification, stating on page 43 of the analysis AQ-11, middle of the condition, under NOX as NO-2, 12.2 PPM at 15 percent O-2, add the words "for the SCR-equipped units," and at the very end of that condition, strike the rule 2201 and replace with rule 4703.

On page 49, air quality condition AQ-35, in the middle of the condition, strike the words "corresponding to the averaging period specified in the emission test period used to determine compliance with an emission standard," and replace with the words "shall correspond to the averaging period for each respective emission standard."

On page 50, air AQ-37 condition, beginning of the condition, should add the words "except for the SCONOX-equipped unit, the ammonia," and those, and the condition remains the same for the end of that condition.

Similarly, on page 50, condition AQ-40, add the words at the beginning of the condition "except for the SCONOX-equipped unit," comma, and then continue on with the same wording.

On page 51, condition AQ-41, the very last line, permit unit at the end is, as that's now prepared, is conditions listed in S(dash)-3412(dash)-one(dash)-zero, the one should be struck and should read 34-one-two(dash)-four(dash)-zero.

And finally, page 53, AQ-51, the emission limit for the cooling tower should be replaced from 11.3 pounds per day to 11.2 pounds per day.

Q Thank you, Mr. Golden. Could you please summarize your testimony?

A Staff did an analysis of the project's potential impacts under the requirements of the California Environmental Quality Act and a determination of compliance with all applicable federal, state and district rules and regulations. The current setting of the area where the project's to be located currently of air quality the area experiences violations, does not experience violations of any NO-2, CO or SO-2 ambient standard. The area does experience violations of the state and federal one-hour ozone standard and the PM-10 state 24-hour standard.

The project in a nutshell are four ABB GT-24 171-megawatt combustion turbines with unfired heat recovery steam

generators and four 96-megawatt steam turbines. The project's emissions were calculated based on the assumption of 40 hot or warm startups and 10 cold startups per turbine per year. These assumptions were predominantly used to determine the appropriate quantity of emission offsets necessary for the project.

To determine the project impacts, modelling analysis was performed to quantify the potential impacts from the construction at the project site, the project operation and the cumulative impacts of the La Paloma project along in combination with the Sunrise cogeneration project and the Elk Hills project.

For construction, based on this modelling analysis, we concluded that the project could cause a violation of the state one-hour NO-2 standard and a substantial impact on the state 24-hour PM-10 standard. However, staff believes that the dispersion modelling analysis vastly overstates the potential impacts and that the actual impacts using appropriate construction mitigation techniques would be considerably less.

For operational impacts of the project, based on the modelling analysis that we evaluated, primarily submitted by the Applicant, project's impacts either during steady state or startup operational conditions would not cause a violation of any NO-2, CO or SO-2 standard. However, PM-10 impacts could be significant if left unmitigated.

The project's emissions of predominantly NOX and to a lesser degree VOCs would have the potential of contributing to already existing ozone violations. For cumulative impacts staff performed an air dispersion modelling analysis of the three proposed western Kern County energy projects currently before the CEC which are the La Paloma project, the Sunrise cogeneration project and the Elk Hills project.

Based on the results of that analysis, the combined operations of those three projects would not cause a violation of any NO-2, CO or SO-2 ambient air quality standard. The three projects' PM-10 impacts could contribute minutely to the -- to existing violations of 24-hour state PM-10 standard.

For mitigation measures, for construction the project will be required to comply with regulation 8 which is a series of fugitive dust limitation rules under the district rules and regulations. Staff is proposing two additional conditions, of which one would require the Applicant to provide a plan and implement the measures in that plan to demonstrate compliance with the regulation 8, those fugitive dust limitation rules, and to two, another condition that would provide documentation to CEC that the earth-moving equipment is properly tuned to minimize NO-2 and CO emissions.

For the operation mitigation, the emissions are limited by the exclusive use of natural gas to minimize SO-2 and PM-10

emissions, the use of dry low-NOX burners, and selective catalytic reduction or the use of SCONOX on one of the turbines that will minimize NOX, CO and VOC emissions.

In addition, emission offsets per district rule requirements would be provided for NOX, VOC, P<-10 and SO-2 and have been provided. These offsets have been acquired by the Applicant through transfer of ERC certificates except for a very small portion which is the San Joaquin valley energy partners offsets where an option contract has already been signed, as been stated earlier.

The combination of state-of-the-art emission controls, the use of very clean fuel, and the surrendered emission offsets results in a project that is fully mitigated and reduces potential impacts to a level of insignificance. From a compliance with laws, ordinances, regulations and standard, the project has already been issued a PSD permit from EPA and we -- it's shown at -- it is in compliance with the PSD regulations and as you heard earlier, the air district has issued a determination of compliance that concludes that the project complies with all district rules and regulations.

Therefore, staff recommends certification of the La Paloma project with the inclusion of the proposed conditions of certification.

That concludes my summary.

Q That conclude your summary? Is there anything else you'd like to add?

A No.

MR. OGATA: Mr. Golden is available for cross-examination.

MR. VALKOSKY: Mr. Thompson.

MR. THOMPSON: No questions. Thank you.

MR. VALKOSKY: Ms. Poole.

MS. POOLE: No questions.

MR. VALKOSKY: Mr. Golden, when you say that the ERC certificates have been obtained, we've heard the testimony that it has been both by direct transfer and by the execution of a legally enforceable option agreement. Does the latter meet your definition of obtained insofar as having gotten rights to the ERCs?

THE WITNESS: From a standpoint of how we are satisfied that the offsets are there and have been certified, yes, it does, the option contract, it does.

MR. VALKOSKY: Okay, so does that in your view comport with the requirements of public resources code 25-523-D-2, which requires the identification and obtaining of sufficient credits before licensing?

THE WITNESS: Yes, it does.

MR. VALKOSKY: Okay, do you believe or that that section of the public resources code should be included in the applicable standards, ordinances and laws identified in your testimony?

THE WITNESS: It would -- hasn't in the past. That's a good question. I suspect we could probably insert that if you would so, if you would like to.

MR. VALKOSKY: I'm asking you for your opinion, that's all.

THE WITNESS: This is a new one. I would say that we'd have to talk with the counsel on this. It would probably be a good idea in future cases that we do include that, considering the interest of various committees on the offset issue and that it should be part of our testimony.

So I would probably make that recommendation.

MR. VALKOSKY: Okay, thank you.

MR. ROHY: I missed, misheard part of your testimony on the number of starts. Could -- that you based your testimony on. You had so many hot starts and so many cold starts. Could you repeat that number, please?

THE WITNESS: Yes, the Applicant's proposed under the proposal was for on per-turbine basis would be 40 warm or hot starts per turbine per year and 10 cold starts per year per turbine.

MR. ROHY: If that number were significantly higher, would that affect your testimony?

THE WITNESS: It has certainly the potential for us in our evaluation of what we believe to be the reasonable expectation of operation of the project if there was going to be considerably more startups. Based upon what I've seen here, I don't believe the project intends to have many startups; therefore I think the emissions are going to be on a routine basis minimized and versus a project where you may have literally hundreds of startups per year, then we would probably evaluate that project under scenario that on a routine basis a startup is part of the routine operation.

So yes, there would be a different scope in the way we'd analyze the project with more starts.

MR. ROHY: Under staff's compliance program, if the 7 changed that radically from, say, 40 hot starts to hundreds as you stated a moment ago, would that require them to come back for a change in conditions for certification?

THE WITNESS: No, it would not, right now. The way the permit conditions have been structured is based on an emissions limitation, not on a number of startups per year limitation. And as long as they can comply with the emissions limitation, which is also includes closely scrutinizing the annual emissions on a rolling average, the project's emissions, the Applicant is

actually free to operate as many startups and shutdowns as they would like.

MR. ROHY: Thank you for that clarification.

MR. VALKOSKY: Are there any further questions for Mr. Golden on the topic of air quality?

Thank you, Mr. Golden.

Any public comment on the topic of air quality?

THE WITNESS: Just wanted to make one final comment. I want to thank the Applicant very much for their cooperation during this licensing process. Over the last 15 years of working on projects like this, this is probably one of the easiest projects to work on. The Applicant has been most cooperative. When issues have been raised, we've been able to resolve them quickly and in a positive manner, and I want to thank the Applicant for assisting us in doing our job as expeditiously as we could.

So thank you.

MR. VALKOSKY: Thank you.

(Witness excused.)

MR. VALKOSKY: Mr. Thompson, any exhibits you'd like to move at this time?

MR. THOMPSON: Yes, sir, I do. First of all, Exhibit 15, it appears that on April 21, I guess it was, when we had our first day of hearings, I forgot to move that into evidence. It was sponsored by Mr. Garratt. I'd like to move 15.

In regards to air quality testimony that we just completed, I'd like to move the following exhibits: 4, 8-A, 8-B, 12, 13, 18, 19, 20, 28, 29, and 33.

I'd like to also move Exhibit 52, which is the EPA document that we did not sponsor but established to the best of our knowledge it is a genuine EPA document.

And in general I would like to move the following documents: Exhibit 1, our application for certification; Exhibit 2, our responses to staff data requests; Exhibit 34, which contains our prepared testimony; Exhibit 39, which contains our rebuttal testimony; and finally, Exhibit 43, which contains the resumes of our witnesses.

MR. VALKOSKY: Okay, are there any objections to admitting those?

MR. OGATA: No objections.

MR. VALKOSKY: No objections, they are admitted.

(The documents referred to, having been previously marked for identification as

Exhibits 15, 4, 8-A, 8-B, 12, 13, 18, 19, 20, 28, 29, 33, 52, 1, 2, 34, 39 and 43, were received in evidence.)

MR. VALKOSKY: Mr. Ogata.

MR. OGATA: At this time staff would like to move to admit also Exhibit 33, which is preliminary DOC; Exhibit 35, which is the final staff assessment; Exhibit 37, which is the supplemental revised testimony on paleontological and cultural resources -- apparently we neglected to move that into evidence when we had hearings on those technical areas -- Exhibit 53, the final DOC; and Exhibit 54, the recent revised supplemental testimony on air quality, biology, socioeconomics and soil and water resources.

MR. VALKOSKY: Okay, objections?

MR. THOMPSON: None. Did you move 55?

MR. OGATA: Yes, believe we did 55 earlier.

MR. VALKOSKY: We received 55 --

MR. THOMPSON: Okay --

MR. VALKOSKY: -- already.

MR. THOMPSON: -- no objection.

MR. VALKOSKY: Okay, objections, hearing no objections, those exhibits are also admitted into the record.

(The documents referred to,  
having been previously marked  
for identification as  
Exhibits 33, 35, 37, 53 and 54,  
were received in evidence.)

MR. VALKOSKY: With that, we'll close the evidentiary record on this case.

Customarily we offer the parties an opportunity to brief any issues. I, on behalf of the committee, there is no desire or need for a brief.

MR. THOMPSON: If it comes down to reading something I write or writing the decision, I go with letting you prepare the decision.

MR. VALKOSKY: A final item which we have are the revised versions of the land conditions, visual-4, and bio-6. We left that in a -- they would be submitted as soon as possible. Do we have a further definition as to what as soon as possible really means?

To --

MR. OGATA: How about a week?

MR. THOMPSON: We may be able to do it earlier than that. We're going to try and get a draft done tonight and give it to the staff, so a week at the outside, how's that?

MR. VALKOSKY: Okay, a week from today at the latest?

MR. THOMPSON: Yes.

MR. VALKOSKY: All right. With that, the committee will endeavor to issue its presiding member's proposed decision in as timely a manner as possible, depending on the comments received.

Are there any final comments from anyone here present?

MR. OGATA: I would also like to echo Keith's comments and thank La Paloma staff. This has been a -- one of the most pleasant siting cases I've been involved in as well, just because of the desire of the Applicant to resolve issues, and they've been very cooperative, and our staff has worked very hard, but certainly appreciate the hard work and energy that's gone in on their side as well.

MR. LAURIE: I will reserve recital of how pleasant I have felt about the proceedings and perhaps you can read about it in the proposed decision.

Do you have any closing comments, Mr. Rohy?

MR. ROHY: I have no comments beyond what you just said; I would agree with that statement.

MR. LAURIE: A well-done hearing -- thank you very much.

MR. VALKOSKY: Thank you. We're adjourned.

(Whereupon, at 4:56 p.m., the hearing in the above-entitled matter was concluded.)

STATE OF CALIFORNIA            )  
COUNTY OF KERN                )

I, KENT ANDREWS, authorized to administer oaths pursuant to Section 8211 of the California Code of Civil Procedure, do hereby certify:

That the proceeding was recorded by me and was thereafter transcribed by computer by me into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named, nor in any way interested in the outcome of the cause named in said caption.

Executed 5 July 1999 at Oakland, California.

Kent Andrews

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Official Reporter